EXHIBIT A

1	Wednesday, 15 June 2016	1	MR NESBITT: As the Tribunal and the respondents are aware,
2	(10.00 am)	2	one of our witnesses, Mr Carbonara, who is based in
3	(Proceedings delayed)	3	Myanmar, unfortunately has a medical issue, which means
4	(10.30 am)	4	he is unable to travel. So we're arranging for him to
5	Housekeeping	5	give his evidence by video link, I think on Friday
6	THE CHAIRMAN: Good morning, everyone. It is June 15, 2016.	6	morning.
7	This is LCIA arbitration 132498.	7	The second issue is, again, as I think the Tribunal
8	My name is Tom Webster. On my left I have as	8	will have seen from the emails last night, in light of
9	co-arbitrator Lord Hoffmann. On my right,	9	Dr Moy's latest iteration of his production forecast
10	Professor Lew.	10	that has inevitably caused a delay to both Mr Filippi
11	The first thing is if people on both sides could	11	and Mr Good finalising their expert presentations. So
12	have the attendees identify themselves for the record.	12	one remaining item on the agenda is to fix a time for
13	MR NESBITT: Thank you, Mr Chairman. I am Simon Nesbitt.	13	those to be provided. Ditto Mr Good and Mr Taylor are,
14	The Hogan Lovells' team beside me are Rob Shoesmith,	14	I understand it, preparing a revised joint report to
15	Kate Wilford, Rowena Evans, Richard Trinick,	15	reflect the new figures generated by the impact of
16	Jess Webster, Mike Hornsey and Fred Kuchlin.	16	Dr Moy's further amendments, and that also we need to
17		17	seek a deadline in respect of that.
	And then from NAE and Eni, we have		•
18	Mr Georgio Vicini, Gulio Caropreso, Giuseppe Cerrito,	18	We are, I think, in a position where we can propose
19	Enrico Caligaris from Eni Legal, Mr Ellis Ebohon from	19	end of tomorrow, if that's satisfactory to the Tribunal.
20	NAE Legal. We have Mr Michael Davison from	20	THE CHAIRMAN: Very good.
21	Hogan Lovells, and besides Michael is	21	Respondents, any procedural issue? Then you can
22	Ms Daniella Ascoli, who is our Italian-English	22	respond in particular to the last item as regards the
23	interpreter.	23	timing.
24	THE CHAIRMAN: Thank you very much.	24	MR WADE: The initial procedural issue which I must address
25	Mr Wade, from the respondent's side?	25	is my clients' reservation of rights in respect of
	Page 1		Page 3
1	MR WADE: From the respondent's side, I am Mr Wade. Next to	1	jurisdictional matters, both before the High Court and
2	him is Mr Gunning. Next to him is Mr Harley. Mr Malek,	2	before this Tribunal. There are two separate pending
3	from Allied sits next to him. Beside I can't see who	3	matters still.
4	is beside you, actually.	4	In relation to the service of joint expert reports
5	Julie Forsyth is next to Mr Malek, and	5	and presentations, I believe that the current version of
6	Mr Maxime Girard from Navigant is next to them, and	6	the reservoir engineers' joint statement is with
7	I will allow the people on the back seats, sorry	7	Mr Filippi, and if tomorrow works, then we are content
8		8	
	gentlemen, to identify themselves.	1	with that, and the presentations should be delivered as
9	Felicity Yates, Ayo Awe, Alex Thornton,	9	soon as possible thereafter.
10	Camille Arnold.	10	There is, I believe, although that might have been
11	THE CHAIRMAN: Thank you very much.	11	remedied already I'm not sure we have received the
12	First of all, before we start, thank you very much,	12	updated index of the bundles, and so the bundles were
13	everyone, for the efforts to be here and be prepared by	13	amended yesterday, and we don't have a consolidated
14	June, following our case management conference of	14	index of those. That would be helpful. I am sure it is
15	October. Your efforts are very much appreciated.	15	coming.
16	The Tribunal views that it is appropriate in	16	THE CHAIRMAN: You can check on that and work that out
17	international arbitration to proceed with reasonable	17	between the parties. As regards the timing as well of
18	speed, that's why we have proposed this schedule, and	18	any updated joint report, again we would ask you to work
19	you've accomplished it, thank you.	19	that out between the parties and then get back to us
20	From a procedural point of view, any issues on the	20	with how you see that coming out, and the Tribunal will
21	claimant's side?	21	be happy with what you have worked out within reasonable
22	MR NESBITT: I have couple of housekeeping points,	22	limitations.
23	Mr Chairman, if you want me to raise them now, if that's	23	Now, with that, start with, I believe, the opening
24	what you mean by procedural points?	24	presentation of the claimant first. The court reporters
25	THE CHAIRMAN: Yes.	25	have asked me to propose to you that there be
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1	a mid-morning break at some point, so you might want to	1	page 9 at tab 1 you will see there, in Article 1.1,
2	factor that in.	2	which is the definition section, the definition of "the
3	I think that was factored into your timetable to	3	transferred interests".
4	a certain extent, but I just make that point as	4	So those transferred interests comprised, first,
5	a warning.	5	NAE's 40 per cent interest in the two deep offshore oil
6	MR NESBITT: A point well taken, Mr Chairman. Sorry, just	6	mining leases, OMLs, 120 and 121, the transfer of which
7	in response to what Mr Wade said. I think he said that	7	was effected by way of a deed of assignment on
8	the revised reservoir experts' joint report is with	8	completion, and it is OML 120 which contains the only
9	Mr Filippi. As far as I'm aware, it is not suggested	9	producing discovery in the block, the Oyo field.
10	that there be a revised reservoir experts' report,	10	The second important element of the transferred
11	Mr Filippi simply requires additional time to prepare	11	interests concerned the production sharing contract,
12	his PowerPoint presentation, which is what we're	12	
13		13	which the parties entered into in 2005 and pursuant to
	proposing he'll be able to provide by the end of		which NAE was operating contractor of the Oyo field.
14	tomorrow. It's the quantum experts who, as I understand	14	That part of the transferred interests is more
15	it, are preparing a revised joint report.	15	particularly defined in the SPA as:
16	THE CHAIRMAN: Very good. Thank you for the comment. We'll	16	"All of the sellers [that's NAE's] rights,
17	let the parties work that out between themselves and let	17	interests, duties, liabilities and obligations under the
18	us know if there's an issue.	18	PSC or deriving therefrom, including its liabilities and
19	Opening submissions by MR NESBITT	19	obligations as operating contractor."
20	MR NESBITT: Thank you, Mr Chairman.	20	That part of the deal was completed by way of the
21	With my colleagues from Hogan Lovells I appear for	21	deed of novation. Just for reference, you don't need to
22	the claimant in this arbitration,	22	turn it up yet, but that's in bundle G21, at tab 560.
23	Nigerian Agip Exploration Ltd, a subsidiary of the	23	I should also add that also being transferred to
24	international oil and gas company Eni SpA.	24	Allied was all joint property, meaning materials,
25	My clients claims are declaratory and monetary	25	equipment, plant, machinery, et cetera, which had been
	Page 5		Page 7
1	relief in respect of sums, which have at least in part	1	acquired for petroleum operation by NAE during the
2	been outstanding for almost four years. In the	2	course of the parties' co-operation.
3	meantime, the respondents and their affiliates and those	3	It is a matter of record that Allied has held the
4	who own and control them have been enjoying the full	4	OML since 1992, and that, apart from a relatively brief
5	benefit of the assets in respect of which those payments	5	period of co-ownership with BP and Statoil during which
6	are due.	6	two exploratory wells were drilled, no serious
7	Now, I have no doubt that the Tribunal has, not	7	development activity was undertaken until NAE came on
8	least as a result of the numerous interim applications	8	board.
9		9	
	and hearings that there have already been in this	1	It is also a matter of record that during its period
10	arbitration, already acquired a very substantial degree	10	as operating contractor NAE has expended approximately
11	of familiarity with the background facts which have	11	\$1.3 billion in capital and operating costs on the Oyo
12	brought us here today. But the nevertheless, I will	12	field.
13	start with a little of the background. As we proceed,	13	Now, to that operating cost, Allied has contributed
14	I will give you the bundle references for the documents	14	precisely zero, with the exception of the amounts that
15	I mention, but unless you would like to or	15	it did pay towards the GSO, although not all of those,
16	I specifically invite you to, it shouldn't always be	16	as we know, have in fact been paid and the balance of
17	necessary to turn the documents up.	17	which forms part of NAE's claim in this arbitration.
18	Under the SPA or sale and purchase agreement entered	18	Moreover, of those operating costs, NAE paid
19	into at the end of 2011 and amended and completed in	19	approximately \$60 million to Allied in respect of
20	mid-2012, NAE contracted to sell to Allied Energy Plc	20	services provided by them during the period of NAE's
21	what is defined in the SPA as "the transferred	21	operatorship. And during its tenure as the contractor,
22	interests". It might be helpful if at this point you	22	NAE conducted significant further exploration
23	have to hand bundle A1, which is the so-called core	23	activities, culminating in the drilling of two new
24	bundle, which contains a copy of the SPA and its	24	wells, Oyo-5 and 6, of which Oyo-5 was the second
25	amendment number 1. Indeed, if you care to turn to	25	longest horizontal open hole gravel pack well in the
1	Page 6		Page 8
	1 450 0		1 480 0

1 world at the commencement of production. 1 Turning, first, to the deferred payments. The only 2 2 So in return for the transferred interests under issue remaining for the Tribunal to determine is whether 3 clause 4.1 of the SPA, which you'll find at page 15 in 3 it has jurisdiction to make an award (a) as against 4 the same tab, Allied agreed to pay a total consideration 4 Allied in respect of all of the deferred payments, and 5 of US\$250 million plus or minus certain adjustments, and 5 (b) as against CIL in respect of the third deferred 6 of that \$250 million, 100 million was payable on 6 payment, the first two having been addressed in your 7 completion with the remaining 150 payable in equal 7 second partial award. 8 instalments during 2013 and 2014 to be secured as 8 Indeed, that is a question that you have effectively 9 originally agreed by a bank guarantee. Meanwhile, the 9 already determined in NAE's favour in relation to CIL's 10 adjustments were to be addressed on completion on 10 payment obligation under the guarantee, and there is 11 an estimated basis, with any positive estimated 11 nothing in Allied's evidence or its latest submissions 12 adjustment payable immediately, subject to 12 which suggests that you should reach a different 13 a post-completion process for dealing with any 13 decision in relation to Allied's payment obligation 14 additional payment or refund due either way once the 14 under the SPA. On the contrary, as set out at 2.6 of 15 final figures were known. 15 our pre-hearing submissions, the position as regards 16 But as the Tribunal knows, on 28 June 2012 at 16 Allied is even more straightforward. 17 Allied's request the parties agreed certain amendments 17 Now, in a last-ditch attempt to avoid its liability 18 to the SPA, including, importantly for this arbitration, 18 in its final formal re-amendment of its defence on 19 first, the bank guarantee in respect of the three 19 22 April 2016. Allied ran a rather half-hearted double 20 instalments of \$50 million or the deferred payments was 20 recovery argument. You don't need to turn it up, but 21 replaced with a guarantee in the sum of \$150 million 21 the reference is bundle B1, tab 4, page 113 at 22 22 from CAMAC International Ltd, the parent company of paragraph 176. In fact it is so half-hearted that 23 Allied and now the second respondent in this 23 Allied seems to have already forgotten that it made it 24 arbitration. 24 and makes no reference to it in its pre-hearing 25 The payment dates for the three instalments were 25 submissions. Page 9 Page 11 deferred to 31 December 2013, 2014 and 2015, and instead 1 If the argument is maintained, it is one that 1 2 of being paid on completion, the adjustments were to be 2 appears to confuse the concept of claiming the same debt 3 3 as against two different parties with recovering the paid in three equal instalments, the first due six days 4 4 same debt against two different parties. As we set out after completion and the second and third due at 60-day 5 intervals thereafter. In addition, certain changes 5 at 2.8 of our pre-hearing submissions, there is no difficulty with the former. 6 market share made to the provision which refers to the 6 7 Now, one curious feature of the failure to make the adjustment mechanism, and there is a dispute about what 8 8 deferred payments and, indeed, the adjustment payments those changes mean. 9 is that Allied's own chairman, Dr Lawal, seems to be Finally, in light of the deferral of payment of the 10 adjustments, a second guarantee was provided, this time 10 unclear about whether liability for the payments is 11 in the sum of \$55 million, again by CAMAC International 11 denied or admitted and even whether they've been paid. 12 In his witness statement in February 2016 he says that 12 Ltd. Because, of course, by that time the parties knew 13 that the adjustments would be positive, rather than 13 NAE's claims are denied. The reference there is 14 14 bundle E1, tab 1, page 3 at paragraph 11. negative, and they also knew the approximate amount of 15 the adjustments, as NAE had sent its estimated adjusted 15 This is what he said in a different context on 16 24 February 2014. 16 statement to Allied on 21 June 2012, showing total 17 17 adjustments of around 54.3 million, hence CIL's (Video recording played to the arbitration) 18 18 MR NESBITT: So here we have the chairman of Allied publicly agreement to provide a guarantee with a ceiling of 55. 19 With those amendments, the deal completed on the same 19 representing that he's invested into the acquisition of 20 day, 28 June 2012, and the first payment of \$100 million 20 ENI's interests in Oyo to the tune of in excess of 21 21 \$250 million while, as we sit here today, more than two under the escrow account arrangements set out in 22 clause 4.3 of the SPA was made. 22 years since Dr Lawal made that statement, we know that 23 23 he has most certainly not invested in excess of Unfortunately, the first payment was also the last. 24 Not a further cent of the agreed consideration has been 24 \$250 million to acquire NAE's interest, rather his 25 25 investment is short by over \$200 million, of which over paid by Allied, and that is why we are here today. 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3 (Pages 9 to 12)

1	\$100 million was already overdue for payment at the time	1	Conversely the respondents' position on the issue of
2	he made that statement.	2	the delivery of the 8 August letter is remarkably
3	Be that as it may, moving on to the adjustments. As	3	unclear. They do not attempt to commit to when or even
4	the Tribunal is already aware, the adjustments concern	4	how the letter was delivered. They offer no more than
5	liabilities which NAE incurred on Allied's behalf during	5	uncorroborated witness evidence as to how what they say
6	the operation of the Oyo field, in part in conducting	6	their normal practice ought to have been, which they say
7	the gas shut-off operation, or GSO, between	7	would have been by hand or by courier to NAE's Abuja
8	December 2010 and February 2011 those are the	8	office. The Tribunal will recall that the respondents
9	so-called Oyo-5 GSO liabilities and in part during	9	were specifically asked at the 8 December 2014 hearing
10	continued operations during the period from	10	on the guarantee claims to search for documents
11	31 December 2011 up until completion on 28 June 2012,	11	evidencing delivery, and at the March CMC they expressly
12	part of the so-called post-economic date liabilities,	12	confirmed that they had enough time to search for
13	all of which Allied assumed liability for pursuant to	13	relevant documents, and they produced nothing, in our
14	clause 11.2 of the SPA.	14	submission, of any relevance.
15	Now, there are four questions before you relevant to	15	That seems very odd, frankly. If, as their normal
16	the adjustments, as set out in the parties' agreed list	16	practice would suggest, the letter was delivered by
17	of issues, and I will address each of them briefly in	17	courier or by hand, and in particular if the courier was
18	turn.	18	a reputable commercial courier, as is expressly required
19	At this point, could I ask you to take out	19	by clause 17.1 of the SPA, even if the relevant
20	bundle G21 and turn to tab 566.	20	documents no longer exist in the files of Allied, it
21	Now, the first issue before you is whether this	21	shouldn't be too difficult to ask the courier company to
22	letter authored by Allied and bearing the date	22	check its database for the relevant period, or if it was
23	8 August 2012, if it was indeed a contractually	23	delivered by hand to seek witness testimony from the
24	compliant dispute notice for the purposes of clause 5.5	24	individual who delivered it. But they have come up with
25	of the SPA. Apologies, I should have also requested	25	precisely nothing in terms of hard evidence and no
20	01 410 0111. 11polog.co, 1 0110414 14110 4100 10440004	20	processory meaning in comme or man or rather and me
	Page 13		Page 15
1	that you kindly keep open bundle A1 and this time turn	1	explanation has been provided as to what searches or
2	to the second tab, which contains amendment number 1,	2	enquiries were made.
3	and in particular we will be looking at page 65.	3	By contrast, despite being in the position of the
4	So the issue is whether the 8 August letter was	4	recipient of the letter and, therefore, not required to
5	delivered to and received by NAE within the ten business	5	bear the burden of proof of the date of delivery, NAE
6	days stipulated in clause 5.5, which you'll see at	6	has, through its investigations, produced no less than
7	page 65 and the provisions of which the Tribunal will be	7	five items of documentary evidence relevant to receipt
8	already intimately familiar.	8	of the letter, supported by witness evidence, and all
9	If it wasn't delivered on time, we say that the	9	indicating that the date of receipt stamped on the
10	respondents' defence to its liability to pay the sums	10	letter, 15 August 2012, was indeed the date on which it
11	due, insofar as they are to be treated pursuant to the	11	was first received by NAE.
12	adjustments mechanism, falls at the first hurdle.	12	Now, in answer to that, the respondents don't go so
13	Now, in the SPA the parties agreed that it was for	13	far as to assert in terms that the letter would have
14	the party making delivery to prove the fact and time of	14	been or even should have been received on the day it is
15	delivery. The burden is on them. If you want to turn	15	dated, 8 August, or the day after, rather the
16	it up, but it isn't really necessary just now, you will	16	respondents simply speculate about what NAE may or may
17	find the relevant provisions at clause 17 of the SPA at	17	not have done or of events or processes which may or may
18	page 35 of A1.	18	not have delayed delivery of the letter.
19	Now, it is common ground that the dispute period	19	But that is all really beside the point because it
20	expired on 9 August 2012. NAE's position is very clear,	20	was the respondents' responsibility to ensure that the
21	it says that it received the letter on 15 August, well	21	letter was delivered to NAE within the contractual
22	after expiry of the period, and relies inter alia on the	22	deadline, and it is for the respondents to prove on
23	date stamp shown on the letter. That date stamp was	23	a balance of probabilities that they delivered the
24	applied by the secretary of the gentlemen to whom the	24	letter to NAE by no later than 9 August, and they
25	letter was addressed, Mr Caropreso.	25	haven't done so. Indeed, in their most recent
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submission at 11.33, the respondents indulge in what can only be described as further fanciful speculation about the meaning of the internal emails within NAE, which followed the receipt of the letter, and in what one can only assume is something of a fit of desperation they go so far as to contend that the internal correspondence shows that NAE had concluded that the letter was received in time but in this arbitration has nevertheless decided to maintain the opposite. Of course, that contention is not correct.

Now, turning back to amendment number 1 to the SPA

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Now, turning back to amendment number 1 to the SI and looking in particular at clause 8, which I already mentioned but also clause 12, which is the redefinition of the positive adjustment, the second issue before you is whether, if the Tribunal determines that the letter arrived on time, it did or did not amount in substance to a dispute notice within the meaning of clause 5.5, which says that:

"The purchaser shall notify the seller of any item or items that it wishes to dispute, together with the reasons for such dispute and a list of proposed adjustments."

So you need to determine whether what this letter contains falls within the meaning of clause 5.5 in respect of either seven cost items which were not that this has not yet been done it is premature for Allied to comment or for the adjustment statement to be

Now, on any fair reading that is not a dispute.

Rather, it is the adoption of a position which was not actually within the scope of possible reactions to the final adjustment statement contemplated in the SPA.

Under the SPA, NAE could only send what it regarded as a final adjustment statement. So to say it can't be regarded as final is essentially meaningless. It was

regarded as final is essentially meaningless. It was the final adjustment statement. It wasn't a refusal to pay either in full or in part.

So if the Tribunal were to consider that the SPA as amended does in some way require the parties to agree some of the cost items, the only contractual process so agreeing or not agreeing them was for NAE to include them in the final adjustment statement. There was no other process. And if Allied did not agree to them, for whatever reason, it had to say so in terms and in time, and it didn't do either of those things. So it follows that the only possible and logical outcome of that process is that the costs fall to be treated as agreed under the SPA. Until the commencement of this arbitration, as we'll see in a moment, there was no suggestion from Allied that it took issue with that

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expressly listed out in paragraph 1 of part 1, Schedule 1 to the SPA, that's the clause 12 of amendment

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number 1 that we're looking at, or in relation to the 12 items which were.

I should say in fact the seven items are now reduced to six, as the respondents' quantum expert has conceded that what's referred to as maintenance/repairs, which is a cost item in the sum of \$1.788 million, is the same thing as item 6 in clause 12, referred to as "assistance field service engineer". The reference for that to the quantum experts' joint report is bundle E3, tab 4, page 19.

Now, we address the issue of the contents of the 8 August letter in some detail at 3.39 to 3.66 of our pre-hearing submissions, and I am not going to repeat all of those points. But the essence of our position is that if the respondents had wanted to dispute any items of cost, then they had to say so in terms as required by clause 5.5. They had to say "We dispute this in that amount for the following reasons and here is our propose the list of adjustments". They did not do that, rather in respect of the six cost items, although, of course, the letter doesn't actually provide any list of specific items, they simply say that those items were to be agreed between the parties after completion, and given

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logical outcome.

Now, in respect of the remaining cost items, by which I mean those that are expressly listed out in clause 12 of the SPA amendment, the position is even clearer. To the extent that the August letter could be said to refer to them at all, it simply says:

"Allied will require such additional time as is reasonable for it to fairly and adequately comment on the most recent adjustment statement and accordingly the dispute period provided under the SPA needs to be reasonably extended."

So that, again, is not a dispute, it is a request for an extension, a request for a variation of the SPA, which had clearly provided that time was of the essence for disputing the final adjustment statement. That request was not granted by NAE.

So we say that the letter was not in substance a dispute notice.

The third issue is whether NAE otherwise waived the contractual requirements for a dispute notice. And, again, we've addressed that issue in some detail at 3.71 to 3.84 of our pre-hearing submissions.

Again, the essence of our position is that there is nothing in any of the letters sent by NAE, either before or after 15 August 2012, which was inconsistent with its

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5 (Pages 17 to 20)

1	position that the 8 August letter had been received out	1	letter validly disputed the entirety of the final
2	of time or was inconsistent with the expectation that	2	adjustment statement, which, of course, we say it
3	Allied would meet its contractual deadlines and comply	3	doesn't, nevertheless the Tribunal still has a job to do
4	with its obligation to pay the adjustments. Indeed, the	4	in respect of the adjustments. The parties can't agree
5	striking feature of that correspondence is not so much	5	on the meaning of their contract and, indeed, two
6	what NAE said as what Allied didn't say. If, as is now	6	independent accountants, the parties' respective quantum
7	suggested, Allied genuinely believed that it had issued	7	experts, Mr Taylor and Mr Good, they can't agree if they
8	a valid dispute notice in time, why did it not write	8	are qualified to interpret the parties' contract for
9	back to NAE to say so? The people behind Allied are not	9	them. You'll see that from their joint report,
10	slow to go into print when they believe that they have	10	bundle E3, tab 4, at page 91.
11	a complaint. But Allied didn't do so, rather it did	11	They can only agree what the financial implications
12	what it always seems to do when it is faced with	12	would be if one or other of the different possible
13	a demand for payment, it sought more time to pay.	13	interpretations of the contract is upheld. So it is
14	If I could ask you to turn up bundle G22, which is	14	only in light of a determination as to the meaning of
15	just the next one in the sequence, and turn to tab 600,	15	the SPA that there could be a resolution to the
16	this is a letter sent by Mr Kamoru Lawal to Mr Casula,	16	adjustment claims dispute, and there is no reason why
17	the chairman of NAE, on 1 October 2012, so that's after	17	this Tribunal should not now make that determination.
18	all of the various letters of demand for payment have	18	In any event, the Tribunal still retains
19	been sent by NAE.	19	jurisdiction over NAE's alternative claim for these sums
20	He says as follows I am looking here at about	20	under clause 11.2 of the SPA, to which no jurisdictional
21	four lines from the bottom of the first paragraph:	21	objection has been taken. The value of the 11.2
22	"To enable Allied to fund the new wells while	22	indemnity claim is simply commensurately greater or
23	meeting its current OPEC's obligations, we request that	23	smaller, depending on whether the Tribunal determines it
24	the payment of the positive adjustment be rescheduled	24	has jurisdiction over none, some or all of the amounts
25	until December 31, 2016, such time being after the wells	25	claimed as adjustments.
23	until December 31, 2010, such time being utter the wens	25	oranica do dejustrionis.
	Page 21		Page 23
1	will have been drilled, additional production will have	1	Now, Allied now says that that's not the effect of
2	come on stream and the deferred payments will have been	2	the SPA as amended because the amounts claimed under the
3	made."	3	indemnity provision were excluded from the entire scheme
4	So no indication of any unhappiness with the amount	4	of the SPA, and they say that at 15.14 of their
5	of the adjustments. You can put bundle G22 away.	5	submissions.
6	The final issue, if we're wrong in relation to the	6	Now, we say that that is not a tenable reading of
7	six cost items, i.e. the Tribunal decides that Allied	7	clause 12 of amendment number 1, because that relates
8	did serve a valid dispute notice as regards those items	8	expressly only to the positive adjustment and the
9	on time or that NAE otherwise somehow waived its rights	9	question of what items it should include and when they
10	to insist upon compliance with the contract, is whether	10	should be paid. Essentially, the whole scheme of the
11	the Tribunal nevertheless still has jurisdiction to	11	adjustments sets out a payment mechanism, whereby NAE
12	determine NAE's claim for those cost items insofar as	12	would have the comfort that it would receive payment of
13	they are being treated under the adjustments mechanism.	13	those specific sums in accordance with the defined
14	Well, if the Tribunal has jurisdiction to determine	14	schedule relating to costs arising within the wider
15	NAE's claim in respect of all of the other cost items	15	context of the post-economic date liabilities.
16	_		
	set out in the final adjustment statement, which we say	16	It says nothing about clause 11.2 or the amounts to
	· · · · · · · · · · · · · · · · · · ·	16 17	
17	plainly it does, as we say at 3.66 of our submissions,	17	be covered by the indemnity, and clause 11.2 was left
17 18	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles	17 18	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no
17 18 19	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced	17 18 19	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2.
17 18 19 20	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one	17 18 19 20	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of
17 18 19 20 21	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one seized of disputes regarding the final adjustments	17 18 19 20 21	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of the SPA are expressly defined to include "any
17 18 19 20 21 22	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one seized of disputes regarding the final adjustments statement, to stop in midstream and leave determination	17 18 19 20 21 22	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of the SPA are expressly defined to include "any liabilities incurred by the seller not taken into
17 18 19 20 21 22 23	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one seized of disputes regarding the final adjustments statement, to stop in midstream and leave determination of some of the cost items to accountants in a procedure	17 18 19 20 21	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of the SPA are expressly defined to include "any liabilities incurred by the seller not taken into account in full in the adjustments".
17 18 19 20 21 22 23 24	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one seized of disputes regarding the final adjustments statement, to stop in midstream and leave determination of some of the cost items to accountants in a procedure that has never been instigated by either side.	17 18 19 20 21 22 23	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of the SPA are expressly defined to include "any liabilities incurred by the seller not taken into account in full in the adjustments". So the respondent's jurisdictional argument comes to
17 18 19 20 21 22 23	plainly it does, as we say at 3.66 of our submissions, it would be somewhat inconsistent with the principles that the respondents have so enthusiastically embraced in respect of the PSC claims for the Tribunal, one seized of disputes regarding the final adjustments statement, to stop in midstream and leave determination of some of the cost items to accountants in a procedure	17 18 19 20 21 22 23 24	be covered by the indemnity, and clause 11.2 was left completely untouched by the amendment. There is no witness evidence of any discussion about clause 11.2. And the post-economic date liabilities in Article 1.1 of the SPA are expressly defined to include "any liabilities incurred by the seller not taken into account in full in the adjustments".

6 (Pages 21 to 24)

15 June 2016 Day 1 NAE Arbitration

Tribunal to determine what the SPA means, the payment of 1 2 2 what amounts NAE is entitled now by way of adjustments 3 and to what amounts it is entitled under the clause 11.2 3 4 4 5 NAE has been out of its money wholly unjustifiably 5 for a very long time and Allied needs to pay up. 6 6 7 7 I am going to turn now to the counterclaims which 8 8 the respondents have brought in this arbitration. 9 9 We have said many times, and I repeat, that we 10 believe that these counterclaims are no more than 10 11 a tactic to string out this arbitration and to delay the 11 12 recognition of Allied's liability for NAE's claims. In 12 13 the post-SPA completion correspondence between the 13 14 parties, with which the Tribunal is already familiar, 14 15 there was no mention of any such claims. In fact, there 15 16 16 was no mention at all until this arbitration was 17 17 commenced by NAE. To some extent, bearing in mind that 18 18 we have been in arbitration for some two and a half 19 years now, that delay tactic has been quite successful 19 20 20 but NAE believes that it needs to stop now. 21 Now, as I mentioned at the recent CMC, there is 21 22 22 a long list of reasons why the counterclaims don't begin 23 to get off the ground. We've set them out in 23 24 considerable detail in our submissions, so I will touch 24 25 25 on them here only briefly and in a moment we will Page 25 1 address you on two important threshold issues. 1 2 But just by way of introduction, the counterclaims 2 3 3 are essentially for breaches of the PSC entered into in 4 4 July 2005 and eventually novated to Allied in June 2012.

aspect of the Oyo field from highly technical reservoir drilling and production information, to every contract entered into with every service provider.

The other unusual feature of this relationship is that, financially speaking, it was completely one-sided. Allied never paid or contributed to a single cash call in the entire history of the parties' relationship, and the entirety of petroleum operations on the Oyo field were financed by NAE, as I said, to the tune of \$1.3 billion. However, in return for that zero contribution, and despite the lower than expected production from the field, Allied nonetheless lifted around \$150 million in crude oil produced from the Oyo field over the relevant period.

So against that background, in my submission, it is not plausible to suppose that NAE either by agreement or inadvertently would have left itself exposed to the possibility of historical claims by Allied in respect of petroleum operations. And they didn't, which brings me back to the two there's hold questions.

As the Tribunal will recall from the preliminary issues hearing back in July 2014, it is NAE's position that any possible liability for claims of the sort now being run by Allied is excluded by the express terms and effect of the deed of novation.

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Now, it is clear from the documents and the evidence that this was not a typical operator/non-operator contractual relationship, where often the non-operator takes a bit of a back seat, pays his cash calls, and lifts crude oil cargoes in proportion to his participating interest. On the contrary, in this relationship, and however much the respondents now try to play down their role, the Allied parties and individuals wanted to be and were actively involved in petroleum operations with personnel on the ground in Nigeria, including on the FPSO, regularly making proposals and suggestions, reviewing and approving work programmes, budgets, and key operational decisions, and receiving information on a daily basis. That that is what the parties intended and wanted is also reflected in the terms of the co-operation agreement and the secondment agreement, which they entered into in January 2016, and the master services agreement of February 2009, as well as the integrated management team that they set up. Above all, they

enjoined very detailed knowledge of pretty much every

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Now, strangely, and perhaps in a sign of how keen they are to avoid the issue, the respondents -- and this appears even in their pre-hearing submission at 9.16 -continue to insist that the issue is already res judicata in their favour as a result of the Tribunal's first partial award. However, that was not one of the preliminary issues being treated at that time, and the majority of the Tribunal, you will recall, expressly stated that it was not determining that point. If you need the reference, it is hearing bundle C2 at tab 5, page 41, paragraph 133.

Now, we maintain our position that the effect of the deed of novation was to exclude NAE's historic liability to Allied in respect of petroleum operations, and we adopt our submissions that we made for the preliminary issues hearing on that point. For reference you can find those at bundle C1, tab 1, page 6 and tab 4, page 94.

We say that its terms and meaning are clear. The respondents say in their pre-hearing submissions -- this is at 9/16 -- that the deed of novation expressly preserves Allied's rights against NAE, but they don't explain how it does that. In fact, the deed of novation states in terms that Allied will assume the liabilities and perform the obligations under the PSC in place of

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7 (Pages 25 to 28)

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1	NAE. It is difficult to imagine how you can assume	1	them please tell me if that's the case instead,
2	something which doesn't yet exist, and so that must mean	2	I have a few slides to demonstrate what I am saying.
3	that Allied was assuming past as well as future	3	Before we begin with those, a few words as to the
4	liabilities, and in that sense NAE's position is on all	4	nature of the counterclaims in general. On the
5	fours with the views expressed by Mr Boswood QC in his	5	respondents' case, all claims concern only the Oyo
6	dissenting opinion in October 2014, which is in	6	field. The Tribunal will have seen the reference to
7	bundle C2, tab 6, at page 73.	7	a partial assignment of the respondents' interest
8	But even if the Tribunal disagrees with that	8	dividing the Oyo and the non-Oyo interests for a short
9	interpretation, such that it considers that the correct	9	period in 2010 and 2011. But it's common ground that
10	construction of the deed of novation is that all	10	non-Oyo part is not relevant to this arbitration.
11	liabilities under the PSC incurred up to the economic	11	Second, all claims derive from the parties'
12	date stayed with NAE, now that, following receipt of	12	participating interests under the PSC. It is that
13	Mr Taylor's quantum report, we have seen for the first	13	contract alone that confers relevant rights and
14	time how the respondents in fact approach the different	14	interests on the parties, including the right to assert
15	elements of the quantification of their claims, we know	15	any of the potential counterclaims.
16	that those claims are either legally impossible or are	16	There are some loose references in the respondents'
17	brought in respect of the alleged losses of an entity	17	pleadings to a diminution in value of the OML's, but
18	for whom no claim has ever been asserted in this	18	Mr Taylor's report makes clear that what he calculates
19	arbitration, either directly or via the supposed agency	19	and what is apparently claimed for is the effect of
20	of Allied.	20	NAE's alleged breaches on the value of the beneficial
21	At this point, I am going to give you some relief	21	interests under the PSC.
22	from me and handover to Mr Shoesmith, who is going to	22	Third, save in respect of a gas flaring fine, which
23	expand on that with the help of a short presentation.	23	is valued about \$1.5 million, I am not going to touch on
24	MR SHOESMITH: Just before I begin thank you I wonder	24	that in this part of the presentation, all claims derive
25	whether we might need a little more relief, given it is	25	from alleged breaches of a single provision of the PSC,
			nom unegen creating of a onigre provision of the rise,
	Page 29		Page 31
1	20 past 11. I have about 20 minutes' worth of material.	1	and that's Article 7.1(a). Mr Nesbitt will talk about
2	I wonder whether you would like to hear me before or	2	that in more detail once I am finished.
3	after the break?	3	So moving on to my slides, the respondents'
4	THE CHAIRMAN: Court reporters, would you like a break now?	4	collective potential counterclaims can be divided
5	So we will resume in 15 minutes.	5	roughly through three limbs. I've have to apologise,
6	MR SHOESMITH: Thank you.	6	I can't quite keep up with the changes of position. As
7	(11.22 am)	7	of about 7.30 last night this was the position. It's
8	(A short break)	8	now clearly going to change again on the respondents'
9	(11.43 am)	9	side. But three limbs.
10	THE CHAIRMAN: Mr Shoesmith.	10	First, in respect of Allied's own loss. That's
11	Opening submissions by MR SHOESMITH	11	attributable to what is called the NAE beneficial
12	MR SHOESMITH: Thank you, Mr Chairman.	12	interest. That's 40 per cent participating interest in
13	So, as Mr Nesbitt touched upon before the break, at	13	the PSC that Allied that acquired from NAE on
14	sections 7 to 11 of NAE's pre-hearing submissions the	14	28 June 2012, and that's currently, I have to say now,
15	Tribunal will have seen that questions have arisen	15	quantified based on Mr Filippi's reservoir model at
16	following the submission of the respondents' quantum	16	\$8 million approximately, I don't think that will
17	experts' evidence as to the nature and viability of the	17	change, and based on Dr Moy's latest model until last
18	counterclaims. So I propose to provide the Tribunal	18	night approximately \$380 million.
19	with an overview of the circumstances relevant to that	19	Second, in respect of the Allied CINL beneficial
20	issue and the consequences of it having arisen at such	20	interest for the period until the assignment of that
21	an advanced stage in the arbitration, at four months	21	interest to CPL, that was on 7 April 2011. Though
	after the close of pleadings.	22	notionally a claim is said to accrue to Allied and CINL
22	Lilro Mr Noghitt Lyvill aivo von hundla references	23	in that respect, the parties' experts agree that Allied
22 23	Like Mr Nesbitt, I will give you bundle references		
	as I go along, but I don't propose to take you to any	24	and CINL suffered no loss in respect of that beneficial
23		1	
23 24	as I go along, but I don't propose to take you to any	24	and CINL suffered no loss in respect of that beneficial

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1	counterclaims is not really a claim at all.	1	regard, again, we're not entirely clear, that appears to
2	Third, perhaps surprisingly instead, the	2	be asserted of as of at least February 2010, and that's
3	respondents, through the eyes of their expert at least,	3	paragraph 6.7 of the respondents' pre-hearing
4	seem to claim for losses allegedly suffered by CPL, the	4	submissions.
5	affiliate that acquired the Allied CINL beneficial	5	Then there are two aspects of the Oyo-5 GSO, the gas
6	interest in April 2010. Those losses, if they are	6	shut-off operation, namely delay in its planning.
7	relevant, are quantified at either approximately	7	Again, we're not clear whether a separate damages claim
8	2 million, based on Mr Filippi's model, or assuming it	8	is now maintained in that respect, but if it is, the
9	remains the same somewhere in the region of 123 million,	9	alleged breach seems to have been between mid-January
10	based on Dr Moy's model.	10	and coincidentally 7 April 2010. That's paragraph 5.10
11	Now, the respondents arrive at that three-pronged	11	of the respondents' pre-hearing submissions.
12	counterclaim through an analysis, and I would say	12	Finally, in respect of obtaining packers, as they
13	a mis-analysis perhaps of various novations of the	13	are called, for the GSO. That failure is not really
14	beneficial interests that occurred over the period since	14	dwelled upon at all in the respondents' pre-hearing
15	2005. Let's start in 2005, then.	15	submissions. So, again, there is a bit of doubt about
16	At the outset of the parties' relationship, I've	16	that.
17	a few pictures, as their name suggests there was the	17	In early 2010, therefore, the potential claims of
18	40 per cent NAE beneficial interest, that's there on the	18	the parties can only have been as shown here. Looking
19	left, being held up by a little NAE man, and	19	at the Allied/CINL side first, as indicated just now, it
20	a cumulative 60 per cent applied Allied/CAMAC CINL,	20	is not certain whether breaches are alleged to have
21	let's call it beneficial interests split 57.5 per cent	21	occurred prior to the novation date in respect of
22	in favour of Allied, 2.5 per cent for CINL.	22	production, gas flaring, delay and packers. So I have
23	There are no changes in the parties' beneficial	23	shown those on this slide as potential claims. They
24	interests before the causes of action complained of	24	have a question mark in the appropriate box of bundle
25	began to accrue. If they accrued, it was as follows.	25	claims for each party.
	Page 33		Page 35
1	In respect of cementing of the 958 section of the	1	On the NAE side, as I will come on to and as
2	Oyo-5 well at some point between July and October 2009	2	Mr Nesbitt alluded to already, there is even more
3	we see that now from the respondents' pre-hearing	3	uncertainty. There is a dispute between the parties as
4	submissions, paragraph 3.9 onwards.	4	to whether NAE could ever have any claim for breach of
5	In respect of beaning up of that same well, that's	5	contract against itself. NAE says that is simply not
6	to say getting ready for production, accruing between	6	possible. But it is alleged those notional claims are
7	October and December 2009, we see that from	7	allocated on the slide along for everything else for
8	paragraph 4.4 of the respondents' pre-hearing	8	demonstrable purposes. But I have put question marks in
9	submissions. (Pause).	9	those boxes as well, just so you understand what that is
10	If the respondents establish breach in respect of	10	about.
11	the cementing and beaning up claims, there is no dispute	11	Whatever the viability of the counterclaims
12	that those claims accrued before the first change in	12	allocated, for present purposes it's what happened next
13	ownership of the beneficial interests. That was in	13	that is important, and that's the first deed of
14	April 2010.	14	novation, as we're calling it.
15	But it also seems likely you'll see on the slide	15	The parties disagree as to what was novated to CPL.
16	there are some more potential claims. It's not entirely	16	The critical provision shown here in relevant part is
17	clear, however, from the respondents' case that further	17	clause 2.1. So with effect from and including novation
18	causes of action would have accrued in respect of	18	date Allied and CINL assigned to CPL all of their
19	production from the Oyo-5 well, and that's between	19	respective rights, liabilities, duties, covenants,
20	December 2009 and April 2010. Looking at the	20	undertakings, warranties, other obligations contained in
21	pre-hearing submissions, it seems like a breach is	21	the PSC in respect of the Oyo field only, remember
22	asserted as of December 2009. That's paragraphs 4.4 and	22	that's split, including all claims and demands in
23	4.30 of the respondents' submissions.	23	respect of the Oyo field arising in connection with the
24	In respect of gas flaring, that's in the same	24	PSC. You have bundle reference there.
25	period. If a separate damages claim is made in that	25	NAE's case is that that wording had the effect of
	Page 34		Page 36

1	passing to CPL all of the claims shown on the previous	1	irrespective of whether that's in Allied or CINL's hands
2	slide as having, on the respondents' case, accrued to	2	or in CPL's hands, the position is the same. The
3	Allied and/or CINL. In NAE's submission that is the	3	experts agree there is no loss.
4	only possible reading of clause 2.1 because Allied and	4	LORD HOFFMANN: Yes.
5	CINL would only ever have the right to claims that had	5	MR SHOESMITH: So I think we're here. I've shown this on
6	already accrued as of the novation date. They could	6	the slide by a little greyed-out no claim sign, so you
7	never have a right to claims accruing thereafter because	7	can see that that's what happened.
8	all rights had passed by agreement to CPL. It's the	8	Over more or less the next two years, from
9	same point that Mr Nesbitt made earlier as regards the	9	April 2010, the allocation of beneficial interest under
10	three deed of novation, and I will come back to that.	10	the PSC remained the same in all relevant respects.
		11	
11	The respondents' reading of that provision that only	12	I say "relevant" because, as I've explained, there is
12	future claims passed, renders redundant the final words		there is non-Oyo element, and that's rejoining the Oyo
13	regarding claims. They are effectively read out of that	13	element in the intervening period, but no claims arise
14	provision.	14	in respect of that.
15	On 7 April 2010, in NAE's world view, the picture	15	So in that period of two years, the respondents
16	therefore changes considerably. The only parties who	16	suggest that further claims arose or may have arisen if
17	could conceivably have claims under the PSC at that	17	they'd not already accrued prior to April 2010. That's
18	stage in respect of any matters occurred prior to the	18	by operation of Nigerian law, the claim accrues as at
19	novation date are NAE, but I've already said that leads	19	the date of breach, further damages do not give rise to
20	to considerable doubt as to that, and CPL, CPL having	20	a separate free-standing claim.
21	acquired all of Allied and CINL's rights, including	21	So NAE and/or CPL may have gained additional claims
22	expressly all claims. Allied and CINL, you will see on	22	in respect of production, gas flaring, delay and
23	the slide, have none.	23	packers. Those are the alternative claims, if they
24	Of course, that's of very little practical	24	haven't already accrued.
25	significance now because we know the quantum experts	25	In respect of the outcome of the GSO and the
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	Page 37		Page 39
1	agree that any such claims resulted in no loss in the	1	alternative procedures adopted, the relevant period for
2	period prior to 7 April 2010.	2	those, December 2010 to February 2011, are the dates of
3	LORD HOFFMANN: Sorry, say that part again?	3	the GSO, so it is not contentious that they can only
4	MR SHOESMITH: The parties' quantum experts agree that the	4	have arisen after the assignment.
5	parties suffered no loss, there was no loss incurred for	5	Again, in the hope that it aids understanding, I've
6	matters occurring prior to 7 April 2010.	6	put this up visually here, or at least I've tried.
7	LORD HOFFMANN: Right.	7	CPL's pool of potential claims on the right has expanded
8	MR SHOESMITH: So it doesn't really matter who held them,	8	but, as I've said, pre-and post-novation claims are
9	whether it is Allied and CINL or whether it is CPL.	9	alternative claims not cumulative claims, so they are
10	Even a claim by CPL in respect of such matters is not	10	all shown here with a question mark.
11	viable. If you recall, on my original slides going	11	Allied and CINL continued to have no claims
12			
13	through the quantum experts' table, it is this one. It	12 13	whatsoever against NAE under the PSC.
	is categorised as Allied's loss in respect of the Allied/CINL beneficial interest. The next line down		Of course, it remains NAE's position that
14		14	post-novation claims against itself are as impossible to
15	underneath the circling, loss between 5 December 2009	15	as pre-novation claims. It can't claim against itself,
16	and 7 April 2010. Reading across, you'll see these are	16	but that's in dispute, and so, again, they are shown on
17	negative figures here	17	the slide just so that you can see what that looks like
18	LORD HOFFMANN: Yes.	18	on the respondents' case.
19	MR SHOESMITH: they are a negative loss. They are no	19	The NAE dispute becomes relevant at this stage.
20	loss at all.	20	We're now at 28 June 2012 because NAE and Allied
21	LORD HOFFMANN: After 5 December 2009 is	21	disagreed as to the effect of the third deed of
22	MR SHOESMITH: From when the respondents say their cause of	22	novation, which they executed on that date. The
23	action accrued, when the losses started to be incurred,	23	relevant wording as before coincidentally perhaps is in
24	until the disposal of the relevant interest on the	24	clause 2.1. That reads:
25	7 April 2010. So obviously for that period,	25	"The parties severally agree that with effect from
	Page 38		Page 40

1 completion as to the terms defined in the SPA, NAE shall 1 potential counter-claimants against NAE, Allied, if it 2 2 acquired NAE's impossible claim against itself -- you cease to be a party to the PSC in respect of the 3 3 transferred interest and Allied shall remain a party to will see I have put an extra large question mark on 4 the PSC and all agreements deriving therefrom and shall 4 that -- and CPL, having acquired potential claims 5 assume the liabilities, perform the obligations and be 5 pursuant to the first deed of novation. Those were 6 entitled to all the rights and benefits therein in the 6 untouched by the third deed of novation. 7 7 place of NAE." There never was and, it is now common ground, there 8 NAE says that this wording has the effect of 8 never could have been any viable claim by CINL against 9 9 assigning to Allied the entirety of its beneficial NAE. The only viable claim it might have had on the 10 interest in the PSC from the beginning. That is the 10 respondents' interpretation of the first deed of novation, even in their world view, is a claim that all 11 only sensible reading, as we've put in our submissions, 11 12 of liabilities, which are separate from obligations in 12 parties agree resulted in no loss. 13 13 this clause. That is the position in which the parties found 14 Like claims under the first deed of novation, the 14 themselves on the date when the counterclaims were 15 liabilities referred to must have already arisen. 15 eventually brought, in October 2013. No further causes 16 Future liabilities accrue to Allied as a result of the 16 of action, I have put on the slide, are said to have 17 assumption of all obligations. 17 accrued since 28 June 2012. Despite that, rather than 18 18 bringing claims on behalf of itself, Allied, were any Consistent with that, NAE also says that Allied 19 acquired all rights from the beginning of their 19 such claims possible and CPL, Allied expressly commenced 20 20 arbitration only in respect of itself and CINL. You can relationship, including any right that NAE may have had 21 to claim in respect of its interest under the PSC. But 21 see that from the response. That's at bundle B1, tab 2. 22 22 We don't need to go there now. we know a claim against itself is not possible. There 23 23 is no such right. What is more, it has at all points up to and 24 Allied's position is less clear. Initially, it said 24 including the submission of its further amended defence 25 clause 2.1 was of prospective effect only. We refer to 25 and counterclaim -- that was just a couple of months ago Page 41 Page 43 at in our pre-hearing submissions at paragraph 11.45(b), 1 on 22 April 2016 -- claimed only in respect of losses 1 2 but the more important reference perhaps is to Mr Wade's 2 allegedly suffered by Allied and by CINL. The bundle 3 3 submissions at the preliminary issues hearing, and you reference B1, tab 4, page 117. 4 4 There is no indication on the face of the pleadings, can find those in bundle C1, tab 4, page 166, starting 5 at line 5. We don't need to go there now. 5 despite their repeating formulation, of any intention to 6 Following Mr Taylor's report, however, recognising 6 bring any claim on behalf of CPL. What the respondents 7 7 say they want, and have consistently said they want, is that it has no viable claim against NAE by operation of 8 8 the first deed of novation, Allied's position now for NAE to indemnify Allied and its affiliates but q 9 appears to be that clause 2.1 of the third deed of crucially and expressly CINL in this case. You'll see novation has the curious result that Allied acquired all 10 10 that from the further amended defence and counterclaim, 11 of NAE's rights in the NAE beneficial interest from the 11 B1, tab 4, page 92, and the paragraph reference, 123.1. 12 12 beginning. That's consistent with NAE's reading, so The respondents could not have been more clear as to 13 that would include NAE's notional claim against itself, 13 what they intended to do. Nor has anything occurred 14 14 were that possible. But at the same time, the since the counterclaims were bought to change the 15 respondents' case is that Allied left the corresponding 15 position as between the parties. You'll see I have put 16 liability for past breaches with NAE. 16 up here a reference to the 2013 transfer agreement. 17 17 Now, not only is that not possible to see on the That purported to reserve the respondents' right to 18 18 face of this contract, which deals with rights and claim against NAE, but we've seen there were no such 19 19 liabilities together, but it is a legal impossibility. claims in respect of the Allied CINL beneficial 20 Whether as a matter of English law or Nigerian law, no 20 interest. They gave them away. And no claims accrued 21 party can have a cause of action against itself, nor can 21 to Allied in respect of the NAE beneficial interest 22 it assign that cause of action to another. But the case 22 because they are legally impossible. On their original 23 23 is advanced against NAE in those terms, and that view, they never passed in the first place but if they 24 assignment is, therefore, represented here. 24 did pass, they don't go anywhere. 25 25 On or after 28 June 2012 there are just two The inclusion of reference to alleged losses of CPL Page 42 Page 44

			<u> </u>
1	in the respondents' expert evidence clearly acknowledges	1	Going back to my original slides, that table, the
2	the fact that CPL, rather than Allied, or CINL is the	2	largest claim by value, that's nearly \$400 million on
3	proper counter-claimant. But that reference does not	3	the respondents' best case, subject to any changes they
4	amount to formally commencing a claim. Nor is it	4	may now like to make, that claim never came into
5	sufficient that in the request for relief submitted with	5	existence in the first place. That's legally
6	the respondents' pre-hearing submissions just last	6	impossible. It never vested in Allied because it is
7	Friday that the respondents now formally seek an award	7	impossible for it to have been assigned, if it did
8	of damages and declarations in respect of Allied, CINL,	8	exist. Alternatively, based on the wording of the third
9	and their affiliates. The reference to the pre-hearing	9	deed of novation, clause 2.1, Allied took liability for
10	submissions there are paragraphs 17.2.6, 17.2.7, 17.3.1,	10	it, together with the right to claim. So it has its own
11	17.3.2.	11	legally impossible claim against itself, and it goes no
12	No claim has ever been brought on behalf of CPL. It	12	further than that.
13	is to this day a non-party to the arbitration. In fact,	13	CPL's claim, which is valued at around 100 million
14	the respondents' confusion in this regard is still	14	currently on the respondents' best case, subject to
15	apparent in their pre-hearing submissions. They	15	change, was not brought before the expiry of the
16	continue to refer at paragraph 2.7.1 to NAE's liability	16	applicable statutory limitation period. It has not been
17	to indemnify Allied and its affiliates, expressly CINL	17	brought now. Not only are the respondents entitled to
18	in this case.	18	no remedy in respect of it, but there is no remedy now
19	The importance of CPL's absence is clear. The	19	available to CPL. If any claim remains at all it's
20	period provided by the Nigerian Limitation Act for CPL's	20	NAE's case that it doesn't that claim in respect of
21	claims under the PSC has in all material respects	21	the period up to 7 April 2010, based on the Allied/CINL
22	already expired. The period as in English law is six	22	beneficial interest, it is agreed resulted in no loss.
23	years from breach. That's section 7 of the	23	For those reasons, sir, it is NAE's contention in
24	Limitation Act, which you'll see at bundle H6, tab 1,	24	this arbitration that it has no case to answer.
25	page 1.	25	Mr Nesbitt is going to explain, unless you have any
	Page 45		Page 47
1	C CDV 4 C 1 C 1 C 1	,	
1	So CPL's potential cementing claim, for example,	1	questions for me, how we arrive at the same conclusion
2 3	expired in or around July or October 2015 at a time when the pleadings clearly show that claim had not been	2 3	looking at the substance. Further opening submissions by MR NESBITT
4	brought. The bean-up production claim, they seem to	4	MR NESBITT: Tempting though it is to simply stop there,
5	come together, appears to have become statute-barred in	5	nevertheless we are obliged to proceed to address the
6	around December 2015. Again, long before any intention	6	balance of the issues raised by the respondents in their
7	was demonstrated to bring it.	7	supposed counterclaims.
8	So the two principal planks of the counterclaims	8	At this juncture, it would be helpful if you could
9	cannot be brought either by CPL, who is not here today,	9	have to hand the PSC, which you'll find still in
10	and is statute-barred anyway, or Allied or CINL, who	10	bundle A1 at tab 5.
11	either the disposed of or never acquired the relevant	11	MR LEW: We need to keep out volume G21?
12	rights to claim.	12	MR NESBITT: No, you can put that away, sir.
13	Clearly, any other pre-novation claims remember	13	You may with to turn to page 136, where you will see
14	that bundle with a question mark on them, if they are	14	the contractual provision which has a starring role in
15	maintained there is some doubt in that respect also	15	this arbitration, according to the respondents, that is
16	ran up against the statute bar on 6 April 2016. That's	16	Article 7.1(a). That is the sole contractual term of
17	before the further amended statement of defence and	17	the PSC of which breach is alleged.
18	counterclaim, before the pre-hearing submissions. Still	18	That provision required NAE to:
19	no claim evident on the face of the pleadings.	19	"Prepare work programmes and budgets and carry out
20	What is left, in particular in respect of the GSO,	20	approved work programmes in accordance with
21	the respondents from their pre-hearing submissions now	21	internationally acceptable petroleum industry practices
22	appear to accept does not form the basis of any viable	22	and standards with the objective of avoiding waste and
23	claim, even if it were notionally possible. So once	23	obtaining maximum ultimate recovery of crude oil at
24	that is particularised, it is apparent that there are no	24	minimum cost."
∠+		1	
25	viable counter-claimant against NAE.	25	LORD HOFFMANN: Sorry, what page did you say?
	viable counter-claimant against NAE. Page 46	25	LORD HOFFMANN: Sorry, what page did you say? Page 48

MR NESHIT: Page 136 of the bundle. It is page 13 of the contract itself contract itself lord IDF/MANN: That's what I wanted. Thank you. MR NESHIT: As et out in our submissions, the respondents' by postion on what Arthes? I (a) actually means and more particularly what "internationally acceptable petroleum industry practices and standards' are, which I will be been perfected and subperson on what Arthes? I (a) actually internationally acceptable petroleum industry practices and standards' are, which I will be been perfected as in standards' are with I will be continually shifted ranging from what I think was an attempt to apply what we would say is the correct of interpretation of Article 7.1(a) by actually identifying the standards they say are the relevant ones, and they did that in their reply to defence to counterclaim— did that in their reply to defence to counterclaim— did that in their reply to defence to counterclaim— different sundards they say are the relevant ones, and they did filterent standard to the one articulated in the PSC different sundards they say are and relutated in the PSC at 11 to propose the particularly basilie, challenging and difficult environment. It is not with the meritang of the views on what it means are and this is the plant of the particularly hostile, challenging and difficult environment, which was in 2005, and sell is stody, a particularly hostile, challenging and difficult environment, which was in 2005, and sell difficult environment, which was in 2005, and sell interpretation of Article 7.1(a) by actually identifying a different than that of the relevant ones, and they did the defined standard, and that is the burgain that the particularly hostile, challenging and difficult environment, which was in 2005, and sell interpretation of contracts and they are relevant ones, and the defined standard, and that is the burgain that the particularly hostile, challenging and difficult environment. It is not what the meritang of the properties of the challenging and difficult	1			
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THE CHAIRMAN: Aren't you putting quite a gloss on those works, bough? There is no mention of peer treiew or anything the thair these words. MR NESBITT: Well, one has to interper what the words mean and that is our interpretation. It doesn't say that is what the experts understand the area of expertise with that is what the experts understand the new training and the present the deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than if the variety of the propose of the policy of the wanted of the policy of the standard than it friends. The deep offshore world and obviously. NAE: would not have wanted to be held to any higher a standard than if the value with. It was comfortable with. In many event, in first Article 7.1(a) is not the only contracted with. In many event, in first Article 7.1(a) is not the only contracted and the standard than it was comfortable with. In many event, in first Article 7.1(a) is was dark and the same training of experts of the standard than it was comfortable with. In many event, in first Article 7.1(a) is benefit and the standard than it friet Article 7.1(a) is and the only contracted than it was comfortable with.				
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4 mit NESHITT. Well, one has to interpret what the words mean 5 and that is our interpretation. It desents any 6 "peer-reviewed", but that is what the experts understand 7 those words to mean. 8 IORD HOFFMANN. Acceptable? 9 MR NESHITT. Yes, But equally— 11 their area of expertise. We have to interpret the 12 contract 13 MR NESHITT. Yes, and the experts are private to their area of expertise. We have to interpret the 14 that. 15 MR LEW. Two experts intight reach different views. 16 MR NESHITT. Well, we have three experts who have reached 17 the same view and one who has a different views. 18 LORD HOFFMANN. Well, exactly. I am trying to make a point 19 in your forcus, actually. 20 MR NESHITT. Well, we now and the respondents deport 21 in DID HOFFMANN. You may not recognise it as such. 22 In ORD HOFFMANN. You may not recognise it as such. 23 expert reports, there Mt Dyson asys that he is applying 24 the test of what would be acceptable to a hypotherical 25 the test of what would be acceptable to a hypotherical 26 the test of what would be acceptable to a hypotherical 27 applying is his own subjective view of whether what NAE 28 did of childrid chow would have been approved by his 29 beyonderical international oil operator. In the wast 30 applying a shib som subjective view of whether what the secondary of the way in which three respondents' probleman gashmission, that has now been reduced down to two concerning abundances of their applying of cases that he refers to, there's actually no did in similar circumstance, but there's not obstate the probleman analysis or explanation of why he believes that to be the case the might reconceable to a hypotherical 3 the contract of the way in which three respondents' production, the management and implementation of the production of what would be acceptable to a hypotherical of the way that the production of the respon	2	words, though? There is no mention of peer review or	2	what we are dealing with.
5 and that is our interpretation. It doesn't say 6 "peer-reviewed", but that is what the experts understand 7 floose words to mean 8 LORD HOFFMANN. Acceptable? 8 Contractual restraint, if you like, on NAE's conduct. 9 Article 7.1(a) is not the only 9 contractual restraint, if you like, on NAE's conduct. 9 Article 7.1(a) also requires NAE to indemnity Allied 9 against loss and damage as a result of negligence, and 10 that are not expertise. We have to interpret the 11 contract. 12 contract. 13 MR NESBITT: Yes, and the experts are typing to assist with 14 that. 15 MR LEW: Two experts might reach different views. 16 MR NESBITT: Well, when we three experts who have reached 17 the same view and one who has a different view. 18 LORD HOFFMANN: Well, exactly. I am trying to make a point 19 in your favour, acnally. 10 MR NESBITT: Well, when you read the respondents' experts' 22 expert reports, there ML byson says that he is applying 24 the test of what would be acceptable to a hypothetical 25 international oil company. And that's all very well, 26 reports it is pretty clear that what he's really 27 applying is his own subjective view of whether what NAE 28 did of ordin'th owould have been approved by his 29 hypothetical international oil operator. In the wast 20 for majority of cases that he refers to, there's actually no 21 analysis or explanation of why he helicses that to be 22 reports it is pretty clear that what he's really 23 applying is his own subjective view of whether what NAE 24 did of ordin'th owould have been approved by his 25 hypothetical international oil operator. In the wast 26 majority of cases that he refers to, there's actually no 27 analysis or explanation of why he helicses that to be 28 the case. He might conceivably have referred to what 29 analysis or explanation of why he helicses that to be 30 the case as the arbitration has proceeded. 31 the conceiled and, even if you feel that you need to give 32 conceiled and, even if you feel that you need to give 33 conceiled and any subject is nown to t	3	anything like that in these words.	3	Secondly, as I've said, the parties were operating
6 felt if was comfortable with 7 those words to mean 8 LORD HOFFMANN: Acceptable? 9 MR NESHIT: Yes, But equally— 10 their area of expertise. We have to interpret the cortract. 13 MR NESHIT: Yes, and the experts are trying to assist with that. 14 that. 15 MR LEW: Two experts might reach different views. 16 MR NESHIT: Yes, and the experts who have reached the same view and one who has a different view. 17 In any event, in fact Article 7.1(a) also requires NAE to indemnify Allied that something which the respondents have expressly contract. 18 LORD HOFFMANN: Well, exactly. I am trying to assist with that yes one was a different view. 19 MR NESHIT: Yes, I understand that: 20 MR NESHIT: Yes, I understand that: 21 LORD HOFFMANN: Well, exactly. I am trying to make a point in your factor, and the same of the your and the respondents' expert expert, there Mr Dyson says that he is applying the text of what would be acceptable to a hypothetical that the properties of what would be acceptable to a hypothetical that the properties is its pretty clear that what he's really applying is his own subjective view of whether what NAE did of didn't do would have been approved by his shown subjective view of whether what NAE did or didn't do would have been approved by his shown subjective view of whether what NAE did or didn't do would have been approved by his shown subjective view of whether what NAE did or didn't do would have been approved by his family and propertical international oil operator. In the vast a majority of cases that he refers to, there's actually to the case. He might conceivably have referred to what another company with similar articumstances, but there's non of that analysis. It is hypothetical international oil operator. In the vast a majority of eases that he refers to, there's actually of the way in mind articumstances by the referred to what another company with similar articumstances by the respondents devoted large sections of their analysis. It is hypothetical in the account of the proper	4	MR NESBITT: Well, one has to interpret what the words mean	4	in the deep offshore world and obviously NAE would not
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contract. MR NESBITT: Yes, and the experts are trying to assist with that. MR LFW: Two experts might reach different views. MR NESBITT: Well, we have three experts who have reached the same view and one who has a different view. LORD HOFFMANN: Well, exactly. I am trying to make a point in your favour, actually. MR NESBITT: Yes, I understand that. LORD HOFFMANN: You may not recognise it as such. LORD HOFFMANN: You may not recognise it as such. LORD HOFFMANN: You may not recognise it as such. LORD HOFFMANN: You may not recognise it as such. LORD HOFFMANN: You may not recognise it as such. Page 53 The test of what would be acceptable to a hypothetical of the test of what would be acceptable to a hypothetical of the way in which the respondents have changed their applying is his own subjective view of whether what NAE did or didn't do would have been approved by his hypothetical international oil corpus, and that he's really another company with similar attributes to NAE actually did in similar circumstance, but there's none of that analysis. It is hypothetical in the extreme. Indeed, the rarely makes references to what the says are examples of practices and standards exhibited to his report. We as any that that type of test is not what the contract is intended and, even if you feel that you need to give consideration to the parties' intentions, that can't be what they intended. Page 54 Page 56 Page 56 Case as the arbitration has proceeded. That change is perhaps most striking in respect of the gas shut off, the GSO, where the claim seems to have changed from very specific operational aspects of the case. He might conceivably have referred to what another company with similar attributes to NAE actually did in similar circumstance, but there's none of that analysis. It is hypothetical in the extreme. Indeed, the respondents is their pre-hearing submission is that, what they intended. The respondents in their pre-hearing submission is that, they intended. The respondents in their pre-hearing submis	10	THE CHAIRMAN: The experts are expressing their opinion in	10	against loss and damage as a result of negligence, and
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20 MR NESBITT: Yes, I understand that. 21 LORD HOFFMANN: You may not recognise it as such. 22 MR NESBITT: Well, when you read the respondents' experts' 23 expert reports, there Mr Dyson says that he is applying 24 the test of what would be acceptable to a hypothetical 25 international oil company. And that's all very well, 26 Page 53 1 but when you actually look at what he says in his 2 reports it is pretty clear that what he's really 3 applying is his own subjective view of whether what NAE 4 did or didn't do would have been approved by his 5 hypothetical international oil operator. In the vast 6 majority of cases that he refers to, there's actually no 7 analysis or explanation of why he believes that to be 8 the case. He might conceivably have referred to what 9 another company with similar attributes to NAE actually 10 did in similar circumstances, but there's none of that 11 analysis. It is hypothetical in the extreme. Indeed, 12 he rarely makes references to what he says are examples 13 of practices and standards exhibited to his report. We 14 say that that type of test is not what the contract 15 intended and, even if you feel that you need to give 16 consideration to the parties' intentions, that can't be 17 what they intended. 18 I think one of the points made or suggested by the 18 respondents in their pre-hearing submission is that, 29 well, if you interpret Article 7.1(a) as we do, that is 20 relatively narrow and so there might be operations where 21 NAE is effectively operating without any restraint or in 22 a vacuum, or whatever way you want to put it. In 23 a vacuum, or whatever way you want to put it. In 24 respondents in their pre-hearing submission is that, 25 responding to the respondents' case. They have put all 26 Page 54 27 Page 56	18	LORD HOFFMANN: Well, exactly. I am trying to make a point	18	production, the management and implementation of the
LORD HOFFMANN: You may not recognise it as such. MR NESBITT: Well, when you read the respondents' expert's expert reports, there Mr Dyson says that he is applying the test of what would be acceptable to a hypothetical international oil company. And that's all very well, Page 53 Dut when you actually look at what he says in his reports it is pretty; clear that what he's really applying is his own subjective view of whether what NAE did or didn't do would have been approved by his hypothetical international oil company. And that's all very well, That change is perhaps most striking in respect of the gas shut off, the GSO, where the claim seems to have changed from very specific operational aspects of the gas shut off, the GSO, where the claim seems to have changed from very specific operational aspects of the GSO, such as the procurement and functioning of packers, and particularly analysis or explanation of why he believes that to be the case. He might conceivably have referred to what another company with similar attributes to NAE actually did in similar circumstances, but there's none of that analysis. It is hypothetical in the extreme. Indeed, say that that type of test is not what the contract intended and, even if you feel that you need to give say that that type of test is not what the contract intended and, even if you feel that you need to give respondents in their pre-hearing submission is that, well, if you interpret Article 7.1(a) as we do, that is respondents in the respondents in the extrem of the parties' intendiously and that the operations where recommended their to what they intended. Page 54 Now, according to be two cene enting and aggressive production. That does not come as a particular surprise and is fairly typical of the way in which the respondents' pre-hearing submission is that, the respondent in the say and in the case as the arbitration has proceeded. That change is perhaps most striking in respect of the gas shut off, the GSO, such as the procurement and functioning of packers	19	in your favour, actually.	19	GSO, and the failure to re-inject gas and the
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23 a vacuum, or whatever way you want to put it. In 24 response to that, first of all, we're obviously 25 responding to the respondents' case. They have put all 26 Page 54 27 of 7.1(a) in respect of specifically the GSO, although 28 we have not had a response to that invitation. 29 Now, just pausing there for a moment. Of course, 29 Page 56	21	relatively narrow and so there might be operations where	21	the respondents' list of issues and asked them to
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25 responding to the respondents' case. They have put all 25 Now, just pausing there for a moment. Of course, Page 54 Page 56	23	a vacuum, or whatever way you want to put it. In	23	of 7.1(a) in respect of specifically the GSO, although
Page 54 Page 56	24	response to that, first of all, we're obviously	24	we have not had a response to that invitation.
	25	responding to the respondents' case. They have put all	25	Now, just pausing there for a moment. Of course,
		Dago 54		Dago 56
		rage 34		

1 2	the technical matters which underlie the counterclaims	_	
2	the technical matters which anderne the equitorelands	1	shown, an analysis of the temperature results from the
	are very interesting, and one can, and indeed one has,	2	PLT data, which was conducted as part of the GSO
3	spent hours, days and weeks as a layperson getting one's	3	operation in an effort to identify the source of the
4	head around them. Of course, because they've been	4	gas, shows convincingly that the gas entering the well
5	raised, we have to deal with them in considerable	5	closest to the area around the casing shoe could not
6	detail. But at the risk of stating the obvious, just	6	have been travelling down behind the casing, which it
7	because they are technical and complex doesn't mean that	7	would have been had there been a channel in with cement,
8	they are of any substance as legal claims.	8	and because if had the PLT data would have shown
9	Turning to the first of the respondents' surviving	9	a temperature cooling effect, and there is no evidence
10	allegations relating to the cementing of the 9 5/8	10	on the PLT data of any such effect.
11	section of the well.	11	Turning to the production allegations, these
12	As we set out in our submissions that claim	12	effectively amount to an allegation that NAE's approach
13	originally consisted of eight separate elements,	13	was too aggressive in terms of bean-up Oyo-5, with too
14	a number of which were abandoned at the expert evidence	14	wide a choke size, and in its management of ongoing
15	stage. But essentially the fact remains that the	15	production. Although, as the arbitration has
16	respondents have adduced no proof positive that the	16	progressed, the respondents and their experts have now
17	cementing was actually defective, quite aside from the	17	accepted that the relevant measure is drawdown, rather
18	question of the execution of the cementing job. Rather,	18	than choke size. That is the pressure differential at
19	they are limited to criticising aspects of the execution	19	the bottom of the well essentially. This is expressly
20	and the evaluation of the cementing work.	20	conceded by Mr Dyson who says in terms that the key
21	Now, we've addressed each of those aspects at length	21	parameter during bean-up and production of an oil and
22	in our witness and expert evidence. We say that there	22	gas well is drawdown and choke size. The reference
23	is nothing to them. Indeed, the respondents don't	23	there is the joint report at E3, tab 3, page 63.
24	really tackle NAE's or its experts' positions head on.	24	Unfortunately, the respondents' experts rather got
25	So, for example, one allegation is that NAE should have	25	off on the wrong foot by claiming that the initial
	Page 57		Page 59
1	conducted what's called reciprocation and rotation of	1	drawdown applied by NAE during bean-up had been 400 psi,
2	the casing as part of the cementing job. Reciprocation	2	pounds per square inch, which is the unit of measure for
3	is moving the casing up and down. Rotation is rotating	3	drawdown. In fact it was about a quarter of that and,
4	it. Although in the pre-hearing submission there is no	4	indeed, was expressly recognised as not being
5	mention of reciprocation, only rotation.	5	an aggressive level of drawdown by the respondents' own
6	But the point I am making is the respondents don't	6	technical team in a report that they wrote after the GSO
7	really make any attempt to address the evidence of NAE's	7	had been completed. The reference to that is
8	expert, Mr Kellingray and indeed their fact witness	8	bundle G16, tab 441, at page 5.
9	Mr Minelli as why it would be extremely foolhardy to	9	So, as we said in our pre-hearing submission, there
10	attempt any casing movement on any deep offshore subsea	10	is a lot of reverse engineering going on. NAE's
11	well. Equally.	11	position is, in summary, on our interpretation of
12	As regards the segmented bond tool, the SBT log,	12	Article 7.1(a) that there are no applicable standards,
13	which NAE ran over the casing and originally, of course,	13	either as regards the bean-up process or the level of
14	as we know, the respondents had claimed that it was	14	drawdown to apply during production. The evidence shows
15	something called a CBL, which is something different and	15	that the drawdown was carefully monitored in an effort
16	a less-sophisticated type of cement evaluation, it is	16	to strike a balance between the gas entry, which was
17	common ground between the experts that the SBT log was	17	happening, and maintaining for production at economic
18	inconclusive, and in circumstances where all other	18	rates in accordance with Article 7.1(a). In any event,
19	indicators suggested that the cement job was	19	as Mr Nigido testifies in his statement, even when the
20	satisfactory, any decision by NAE other than to drill	20	choke size was reduced, there was no evidence that it
21	ahead and carry on would have been inconsistent with	21	affected the gas ratio. It stayed the same.
22	NAE's obligation to avoid waste and obtain maximum	22	In this context, it's helpful to compare the
23	recovery of crude oil at minimum cost.	23	drawdowns that applied on the bean-up of Oyo-5 with
	In any event, and we'll touch upon this when we get	24	those applied on the bean-up of Oyo-7, which is the new
24	in any event, and we is touch upon this when we get		
24 25	to causation as well, as NAE's expert, Mr Crumpton, has	25	well drilled by the respondents in 2014.

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1	Could I also ask you to take out bundle E2, tab 1,	1	programme, in the third column that I referred to,
2	at page 65.	2	"bean-up cumulative time", by the time you get to 105
3	Bundle 6. It is actually the same. So page 65,	3	is it 105? 105 hours and you then look across at
4	120. It also says 65 in the bundle numbering.	4	drawdown, it says 104, but you need to go down one to
5	MR LEW: E2?	5	117 because what that means is that when you get to 105
6	MR NESBITT: Bundle E2, tab 1, is the Navigant report.	6	hours drawdown is then stepped up to 117. So that was
7	MR LEW: It's at page?	7	planning a maximum drawdown of 117 psi accumulative time
8	MR NESBITT: 65. But looking first at the slide, at the top	8	to reach that value of 103 hours.
9	of the slide is the Oyo-7 bean-up programme, and that's	9	Conversely, if you look down at the Oyo-5 bean-up
10	been taken from an exhibit to Mr Dyson's report,	10	data, you can see that that involves a maximum drawdown
11	exhibit MJD23, and it's a bean-up plan which Mr Dyson	11	of 112 psi, that's again the penultimate column, the 112
12	expressly confirms accords with his interpretation of	12	figure at the bottom of that column, and that value has
13	internationally acceptable petroleum industry practices	13	been agreed between the experts as the one that was
14	and standards. He says that on page 65 in front of you	14	actually used, the cumulative time to reach that value
15	at paragraph 7.2.14:	15	of 169 hours.
16	"By way of example, the bean-up of the subsequent	16	So a comparison of those two sets of data shows that
17	Oyo-7 and Oyo-8 wells, Allied/Erin did provide suitable	17	NAE was actually being very prudent in its approach to
18	bean-up programmes along the lines required by	18	bean-up. It was taking a longer period of time to
19	internationally acceptable petroleum industry practices	19	arrive at a lower drawdown. It's effectively applying
20	and standards."	20	quite similar conditions to those designed for Oyo-7 by
21	Although he doesn't, as I said earlier, identify	21	Allied.
22	what those standards are.	22	Oyo-5 and Oyo-7 are similar wells and, as Mr Dyson
23	Going back to the slide, below the actual the actual	23	says, they drain the same reservoir. It's also relevant
24	drawdown data for Oyo-5. I will come back to that in	24	to bear in mind that NAE's approach to bean-up was taken
25	a moment, but if I could ask you to stay in tab 1 and	25	more than five years before the start-up of Oyo-7, and
	Page 61	-	Page 63
1	turn to page 79, page 79, tab 1, and I am now looking at	1	at that time NAE had no knowledge of the very high
2	paragraph 7.5.5 about halfway through that paragraph,	2	propensity for gas incursion from the Oyo reservoir,
3	Mr Dyson says:	3	whereas Allied had the benefit of all the relevant
4	"The approach to the commencement of production	4	accumulated know-how.
5	taken with Oyo-7 and Oyo-8, which drained the same	5	MR LEW: This is a question for the experts, are these two
6	reservoir targeted by Oyo-5, was prudent and much more	6	wells, these Oyo-5 and Oyo-7, are they comparable?
7	careful than NAE's approach. Both wells were carefully	7	MR NESBITT: Yes.
8	and gradually beaned up in a controlled manner starting	8	MR LEW: They are?
9	with smaller choke sizes than those used by NAE. In the	9	MR NESBITT: Yes. When you say "comparable", do you mean in
10	first to eight to nine months of production I understand	10	their design, in their shape
11	that there has been virtually no gas produced from these	11	MR LEW: In their design, in their shape, in the amount of
12	wells."	12	production they can carry? Often when you move
13	So the basis for Mr Dyson's statement appears to be	13	somewhere down the road in an oil field, things will
14	that the bean-up on Oyo-7 started with smaller choke	14	change, for better or worse, depending upon the exact
15	sizes and that the steps between each new choke size	15	situation. (Pause).
16	applied were smaller, and so you can see in the table at	16	MR NESBITT: Based on what we know, we believe that they are
17	the top on the left-hand column is the choke size, and	17	very similar wells, but obviously it is their well and
18	in the third column what's called "bean-up cumulative	18	we don't have access to all of the technical data, such
19	time" is the cumulative period of time at which the	19	as that which you referred to.
20	choke was kept at that size.	20	MR LEW: Thank you.
21	But when you look at the drawdown figures, which you	21	MR NESBITT: As regards the GSO, as I mentioned the latest
22	can see in the penultimate column of each table, you can	22	formulation of Allied's case suggests, although without
23	see that the drawdown planned for Oyo-7 was actually to	23	expressly confirming, that Allied no longer relies on
24	be stepped up much more rapidly than on Oyo-5.	24	the matters complained of in respect of the GSO as
25	So if you look at, first of all, the Oyo-7 bean-up	25	breaches of contract. Instead, their position seems to
	Page 62		Page 64
	1 age 02		1 age 07

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1	be that it is entitled to claim wasted because of the	1	Oyo-7 as follows.
2	GSO as part of its damages on the basis that the GSO	2	So the top chart is the Oyo-7 oil rate. The bottom
3	wasn't successful.	3	chart is the Oyo-7 gas-oil ratio. He identifies the
4	We'll see what approach is taken today but it	4	breakthrough taking place in August 2015, I believe,
5	appears that it may well be the case that the vast	5	about 70 days after the start of production.
6	majority of Mr Dyson's and Mr Crumpton's evidence on the	6	So NAE's position is that this demonstrates that the
7	GSO's execution may now have been rendered irrelevant by	7	problem of gas incursion from the Oyo field is linked to
8	that shift of position.	8	specific reservoir features, as will be seen,
9	On gas reinjection and flaring, there really is very	9	essentially a very high level of permeability, in
10	little to say. A claim in relation to a supposed drop	10	combination with what are referred to as dipping strata
11	in reservoir pressure was trailed in the respondents'	11	or sloping rock formations, in particular, at the heel
12	pleadings but has never materialised. There is no	12	of the Oyo well which were not known at the initial
13	quantification on either a "but for" or an actual basis	13	field start-up.
14	of reservoir pressure by any of Allied's experts. So	14	So there is no causal link between NAE's work as
15	the only surviving relevance of gas flaring seems to be	15	operator and the gas ingression.
16	the DPR find, which we address in our pre-hearing	16	But even if there were, the respondents have not
17	submissions at 7.1 to 7.10.	17	come close to establishing a proper causal link between
18	You can put bundle E away if you wish.	18	the gas ingression and the supposed damages that they
19	In short, for all of the reasons which are set out	19	claim by way of alleged volumes of lost production.
20	in a great more detail in our fact and expert evidence,	20	Because key to Dr Moy's forecasts is one very big
21	we say that the respondents don't come close to making	21	assumption: the drilling of two additional wills in the
22	out any breach of Article 7.1(a).	22	Oyo field, Oyo-7 and Oyo-8, would have been brought
23	But even if that were found to be incorrect, that	23	forward by in one case almost two years and in the other
24	does not, of course, get the respondents home. They	24	about six months. This is admitted in terms by the
25	must then prove that, firstly, if there was a breach,	25	respondents in their pre-hearing submission. They say,
	Page 65		Page 67
1	that it caused the gas ingression and, secondly, if it	1	at 8.9:
2	did cause the gas ingression, that it caused a loss of	2	"The key driver in the value difference between the
3	production to the respondents. That's how they framed	3	two production forecasts [that is Dr Moy's forecast
4	their quantum claim: in terms of loss of oil production.	4	versus Mr Filippi's forecast] is the production profile
5	As regards the cementing, as I have already	5	over time and, in particular, the dates on which the
6	mentioned, the evidence and in particular the production	6	Oyo B and Oyo C [for which read Oyo-7 and Oyo-8] would
7	logging tool data, the PLT data, shows that the gas	7	have been drilled in the 'but for' scenario."
8	cannot have been entering via a channel in the cement.	8	Now, the sole evidential basis for this is
9	That is also supported by Mr Filippi, who has modelled	9	a paragraph of one witness statement where the witness
10	the effect of a gas breakthrough attributable to	10	says that the two wells would likely have been drilled
11	a cement channel and concluded that there was none.	11	and completed by mid-2012.
12	As regards production, as I've already said, the	12	In my submission, proof to the required standard
13	beaning process and drawdown applied was low, lower than	13	that a significant undertaking, such as the drilling of
14	that planned for Oyo-7 by Allied, and lowering it	14	a deep offshore well, would have been planned, budgeted
15	further had no effect on the gas-oil ratio.	15	for, approved and executed far earlier than it actually
16	In any event, as we'll see when we come to consider	16	was, needs a lot more than one paragraph in a witness
17	the evidence in due course, the effect of the gas	17	statement. The respondents know that perfectly well.
18	breakthrough was not the cementing or the approach to	18	They've tried to address the point at 8.16 of their
19	production neither of which, as I've said, was	19	pre-hearing submissions.
20	performed in breach of any applicable industry standards	20	But, frankly, those submissions don't add any
21	in any case but the natural features of the	21	additional support to what is said in the witness
22	reservoir. As Mr Filippi will explain, despite the	22	statement it is the statement of Mr Omidele and
23	respondents' claims to the contrary and despite all the	23	even the respondents are forced to concede, as they do
24	precautions apparently taken, there is also early gas	24	at 8.19 of their pre-hearing submissions, the obvious
25	breakthrough on Oyo-7 and Oyo-8, shown by Mr Filippi on	25	point that:
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	Page 66		Page 68

1	"There can be no exact certainty as to when Oyo-7	1	a rock formation to transmit fluids, such as gas, oil or
2	and Oyo-8 would have been drilled in the 'but for'	2	water, and it is measured in something called darcies.
3	world."	3	It is important in this case as the Oyo reservoir was
4	But even if and now we're getting to the outer	4	found to have a significantly higher level of
5	realms of Wonderland, perhaps the causation hurdles	5	permeability, as I mentioned a moment ago, than was
6	and all of the other hurdles could be overcome, the	6	initially thought.
7	respondents still need to prove their loss. For that,	7	So logically the higher the multiple you use, the
8	they are dependent in the first place on Dr Moy. If	8	higher the permeability in your model. Its significance
9	Dr Moy's reservoir model is not reliable, if the	9	is that a higher permeability results in more oil being
10	modifications he has made to it are not appropriate and	10	produced and less gas. That is reflected in Dr Moy's
11	if his production forecasts do not match history, then	11	revised actual forecasts in his amended report, which
12	if there is anything left of the house of cards at that	12	are higher than in his original report.
13	point it collapses completely.	13	Could I ask you to take bundle E3 that's the
14	We have set out at 14.3 to 14.25 of our pre-hearing	14	bundle containing all of the expert joint reports and
15	submissions the key respects in which we say Dr Moy's	15	turn to tab 5. This is the reservoir experts' joint
16	ever-changing forecasts and the flawed model from which	16	report. I am now looking, first of all, at page 193.
17	they are derived show that his forecasts are not	17	The paragraph number is 6.15.2.5 in the middle of the
18	reliable. There is clearly not enough to time them all	18	page. Here Dr Moy says:
19	this morning and in any event that's a task that is	19	"The plots showed in figures 4, 5 and 43 as 'Dr Moy'
20	perhaps best left to Mr Filippi and Dr Moy himself	20	of BF1 have been taken from 'Actual v2 3"
21	but I will give just one recent example. The Tribunal	21	That's the forecast you saw him referring to in his
22	will recall that following the service of Dr Moy's	22	letter to Stephenson Harwood a moment ago:
23	original report on 19 February, without leave, on	23	" however this has been run as a 'but for' case
24	24 February, an amended version of his report was	24	with a global multiplier of 0.2, instead of 0.1. This
25	produced, containing amended oil production rates for	25	results in a less gassy Oyo-5 and consequent impact on
	F	20	results in a less guesty eye of and consequent impact on
	Page 69		Page 71
1	Oyo-5 and different forecasts for the other wells.	1	overall reservoir pressure and well performance.
2	If I could ask you, having asked you to put it away,	2	I acknowledge that this run was incorrectly run with
3	to retrieve bundle E2 and turn to tab 3, this is	3	a multiplier of 0.2 and I present in Appendix 9.4
4	Dr Moy's covering letter to Mr Wade at	4	the results of the same run but using a multiplier of
5	Stephenson Harwood, containing his explanation of why he	5	0.1."
6	has amended his expert report. I am looking here at the	6	So essentially Dr Moy seems to have changed his mind
7	second numbered paragraph of the letter, where he says:	7	back again. He now says that his actual production
8	"I have further confirmed that the reservoir model	8	forecast was incorrectly run and he has rerun it using
9	I developed applied a global permeability modifier of	9	his original multiplier of 0.1. The result of that is
10	0.2 This was based on the core and well test	10	lower oil production forecast from the Oyo field than
11	permeabilities (which are not mentioned in the D&M)	11	Dr Moy has stated in his amended report, and of course
12	report). It was therefore necessary to ensure that the	12	a commensurate increase in the quantum of the
13	same modifier value was used in all the models, and as	13	respondents' supposed damages.
14	a consequence I amended the 'Actual_v2_3' scenarios."	14	Now, apart from the lack of confidence that, in our
15	Figures, tables and their footnotes, et cetera, have	15	submission, that should inspire in the reliability of
16	been revised.	16	Dr Moy's forecasts, by reverting to his original
17	Now, the key bit really is that he says "it was	17	approach and using a multiplier of 0.2 in his "but for"
18	necessary to ensure that the same modifier value was	18	forecasts and 0.1 in his actual forecasts, if I can put
19	used in all the models".	19	it this way he has given the "but for" reservoir double
20	Just for information purposes, the global	20	the permeability of the actual reservoir, which means
21	permeability modifier is essentially a multiple which is	21	when the resulting production forecasts are used to
22	used to dictate the degree of permeability that you	22	calculate a damages claim by comparing the two sets of
23	ascribe to the reservoir in your model. I am sure that	23	forecasts, one is essentially comparing apples with
24	the Tribunal has understood what permeability means in	24	oranges. Moreover, until yesterday evening, Dr Moy's
25	this context, but essentially it is the ability of	25	new figures didn't just alter the forecast actual
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	Page 70		Page 72

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1	production starting from January 2016, they also changed	1	to these provisions last, for no better reason than
2	the figures for actual measured production from the	2	arguably one might say that you only need to consider
3	field up until December 2015.	3	the limitation provision if there is at least a prima
4	Now, that is known production data. It can't be	4	facie case on liability, which for all the reasons we've
5	changed. In other words, in an apparent attempt to	5	already discussed we say there isn't, you could just as
6	improve his history match, his historical production	6	easily consider them at a preliminary stage, since they
7	figures no longer matched actual history. Although	7	are yet a further reason why the counterclaims simply do
8	under cover of the email that we received from	8	not get off the ground.
9	Stephenson Harwood just before 8 o'clock last night, as	9	However, there is a threshold issue here too, which
10	Mr Shoesmith mentioned, Dr Moy submitted a yet further	10	centres on the respondents' contention, which they still
11	revised version of one of his forecasts, together with	11	maintain in their pre-hearing submission at 9.9 to 9.15,
12	a covering letter in which he states that the table he	12	that the clause 12 exclusions do not apply to claims for
13	included in the joint report the week previously was not	13	breach of the PSC brought in this arbitration, whether
14	the one appropriate, which is I think another way of	14	they are framed as direct PSC claims or claims under
15	saying wrong, and that his error this time around was	15	a clause 11.1 indemnity.
16	that he had used historic gas rates rather than	16	Now, that is an issue which will already be familiar
17	historical oil rates as the basis for his revised	17	to the majority of the Tribunal, since, of course, it is
18	forecast.	18	one which is ventilated at the preliminary issues
19	I will leave it to Mr Filippi to comment in due	19	hearing in the context of Allied's position in respect
20	course on whether or not that is an acceptable order of	20	of their agreement at clause 12.18 of the SPA, which you
21	error in the circumstances.	21	don't really need to turn to, but it is the top of
22	I probably have about ten minutes left, Mr Chairman,	22	page 32, to waive any right of set-off as against their
23	if you're willing to indulge me?	23	payment obligations in the SPA.
24	THE CHAIRMAN: Yes.	24	The arguments run by Allied at that time which
25	MR NESBITT: Now, on the GSO wasted costs claim, the fact,	25	for reference you will find in bundle C1, tab 2,
	,,		for recording you will find in ountile c1, the 2,
	Page 73		Page 75
1	of course, is that the respondent had agreed in the side	1	page 72, with NAE's arguments at C1, tab 1, page 26
2	agreement, that's the one approved at the Macom	2	are broadly the same as the arguments that they are
3	meeting and you'll find it, although you don't need	3	still running today. They focus on the definition of
4	to turn it up, in bundle G12, tab 291, page 18 to pay	4	"Claim" in the SPA.
5	the GSO costs, and that agreement wasn't in any sense	5	Now, our position is summarised at 18.59 to 18.73 of
6	express or implied, conditional on the outcome of the	6	our pre-hearing submissions. There are a number of
7	GSO operation.	7	reasons why the respondents are wrong, but the essence
8	In any event, it's clear from the evidence that the	8	of our position is that this is an issue which the
9	respondents knew that a successful outcome, in the sense	9	Tribunal has already had to determine in the context of
10	of successfully shutting off the gas from entering the	10	clause 12.18, and we think that that determination holds
11	well, was not guaranteed. You can see that from the	11	good for all of the limitation provisions set out in
12	minutes of the very same Macom meeting at which the	12	clause 12, including the ones we rely on now.
13	respondents agreed to fund the GSO, which is at	13	Now, as regards, first of all, the clause 11.1
14	bundle G12, tab 294, page 102. No need to turn it up.	14	indemnity claims, you found in terms that any such
15	It is also relevant to note that, as Mr Cerrito	15	claims would be "subject to the limitations and other
16	explains at paragraphs 35 and 36 of his witness	16	provisions of the SPA". I am quoting those words from
17	statement, Allied has already recovered the GSO costs	17	paragraph 181 of the first partial award.
18	from cost oil, from crude oil lifted from the field.	18	So that's very clear.
19	Now, finally, for the purposes of opening, the	19	As regards PSC claims, you found that that
20	contractual exclusions and acknowledgements set out in	20	interpretation of clause 11.1, that it was subject to
21	clause 12 of the SPA. So at this point it may be	21	the limitations and other provisions of the SPA, had to
22	helpful if we go back to bundle A1, tab 1, and you'll	22	be applied consistently, with the result that you
23	find clause 12 beginning at page 26.	23	determined that the purpose of clause 12.8, which is
24	The principal provisions on which we rely are	24	what you were looking at at the time, the set-off
25	clauses 12.1(a), 12.2, 12.4 and 12.20. Although I come	25	waiver, was to exclude any claims relating to the
1			,
	Page 74		Page 76

transferred interests, whether they were framed as PSC claims or as clause 11.1 indemnity claims. If that is right, and obviously we say its, exactly the same analysis must apply when considering the purpose of any other intrinstation provision in clause 12. To so we say that clause 12 applies to all of the counterclaims. To counterclaims of the counterclaims. To particular, we say that clause 12. Ita) excludes have been counterclaims. The soller shall not be liable in respect of any claims. If or all of the counterclaims in this arbitration, you need only read clause 12. Ita and consumers, our need that conclusion, going back to the SPA and clause 12. Ita and consumers, our need that conclusion, going back to the SPA and clause 12. Ita and consumers of the counterclaims in this arbitration, you need only read clause 12. Ita arbitration you need to have the same and the counterclaims are the same arbitration and independent of the counterclaims arise out of ments or circumstances which Allied knew or should reasonably have known about by reason of its access to and independent in the your provision and during negotiations of the SPA they attempted to limit its extent. This is the last bundle. But what is more, it is clear on the evidence that that was the effect of that provision and during negotiations of the SPA they attempted to limit its extent. This is the last bundle of limit its extent. This is the last bundle of limit its extent. This is the last bundle of limit its extent in this bundle. Page 79 Page 79 Page 79 Page 79 Page 79 Page 79 Page 78 Page 78 Page 78 Page 78 Page 7				
claims or as clause 1.1 indemuity claims. If that is right, and obviously we say it is, exactly the same analysis must apply when considering the purpose of any other limitation provision in clause 12. So we say that clause 1.2 apples to all of the counterclaims. In particular, we say that clause 12.1(a) excludes NAFs liability for all of the counterclaims. All respect to the same was such as the same and consequences. Now, I said earlier that clause 12 provides another ground to domsnis the counterclaims on a preliminary basis. To reach that conclusion, going back to the SPA basis. To reach that conclusion, going back to the SPA and clause 12.2 (a) says. The setter shall not be liable in respect of any claim to the extent that the marter or circumstance plant in the extent that the marter or circumstance of the same shown or should reasonably have known about by reason of its access to and involvement in the Oyo field and its operations. We say that all of the counterclaims arise out of manters or circumstances which Allied knew perfectly well that that was the effect of that provision and during expositions of the SPA day at the simer, it is clear on the evidence that have been known by the state of	1	transferred interests, whether they were framed as PSC	1	has deleted Mr Malek's proposed insertion and the clause
analysis must apply when considering the purpose of any other limitation provision in clause 12. So we say that clause 12 applies to all of the counterclaims. In particular, we say that clause 12.1(a) excludes and clause 12.1(a) assignated to the SPA and clause 12.2(a) assignated to the seal assignated to the SPA and clause 12.1(a) assignated to the SPA and clause 12.1(a) assignated the seal assignated to the seal assignated the seal assignated to the seal assignated the seal a	2	-	2	
other limitation provision in clause 12 So we say that clause 12 applies to all of the counterclaims. In particular, we say that clause 12 decembers of a particular, we say that clause 12 decembers of a particular, we say that clause 12.1 (a) excludes and clause 12 and assuming you accept that clause 12 decembers of a particular, we say that clause 12.1 (a) excludes and clause 12.2 and assuming you accept that clause 12 clause 12.2 in control of the extent that the matter or circumstance giving rise to the claim was known or should reasonably have known that the matter or circumstance which Allied Knew or should reasonably have known about by reason of its access to and involvement in the Cyo field and its operations. But what is more, it is clear on the evidence that and involvement in the Cyo field and its operations. But what is more, it is clear on the evidence that that I will ask you to turn up. It is bundle GI9.1 am going to look at a couple of documents in this bundle. Page 77 First of all, tab 509 the first page, which is 245. That's an email from Mr Cerrito of NAE to Mr Malek of Signed. In paragraph 1 he says: "Clause 12.1 (a) excludes and all the related matters are the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known of the evidence demonstrates that Allied knew or should have known that there could be lability to be a control of the particular and the particular expressible. But that is	3	right, and obviously we say it is, exactly the same	3	scope of clause 12.1(a) in full knowledge of its meaning
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1	But	1	submissions and so we prepared a set, even if we're not
2	MR LEW: Forgive me, where was your comment that you just	2	entirely accustomed to doing that.
3	made on Allied's view on the draft of 12.2(c) and (d)?	3	There are a number of introductory points I would
4	MR NESBITT: Sorry, it is page 29 at the bottom. So do you	4	like to make on that slide, and the first is that in the
5	see 12.2(d)? Page 29 in the bundle, 27 in the draft.	5	course of their pre-hearing submissions served last
6	MR LEW: Yes, I have that.	6	week, the claimants have introduced an entirely new
7	MR NESBITT: Yes.	7	argument in respect of novations, which rely heavily,
8	MR LEW: I see. The clause is underneath that.	8	although we didn't hear it today they were introduced by
9	MR NESBITT: Yes. It is in square brackets and begins with	9	Mr Shoesmith, but they rely heavily on an interpretation
10	the words "Delete (c) and (d)". But if we're wrong on	10	of Nigerian case law. So we reserve the right we
11	all of that at 18.1 to 18.58 of our pre-hearing	11	will not deal with those submissions at this point, but
12	submission we have summarised the detailed facts, which	12	we will respond to them in the written closing
13	demonstrate that as a matter of fact the respondents did	13	submissions that are anticipated, and we are in the
14	in any event possess the relevant knowledge of the	14	process of obtaining the necessary Nigerian law input on
15	matters and circumstances which are alleged to give rise	15	those. We understand, even from a preliminary review,
16	to the counterclaims by reference to each constituent	16	subject to what we would say in the end, that they
17	element of the counterclaims as they were originally	17	depend on the misconstruction of the law of standing and
18	pleaded.	18	locus standi.
19	In our submission, the facts speak for themselves.	19	So we reject those submissions but we will respond
20	Everything that is now claimed by the respondents to	20	in detail in due course.
21	constitute a breach of 7.1(a) in this arbitration is	21	The other introductory comment I will make, is that,
22	something which the respondents and their personnel were	22	as you know, Mr Gunning QC has kindly agreed to share
23	fully aware of.	23	the burden of my submissions with me, and the way we
24	So in conclusion, for all of the reasons outlined in	24	have split the tasks between us is that he has agreed to
25	our pleadings, submissions, evidence, the reasons	25	take on the task of introducing and explaining the
	, , ,		
	Page 81		Page 83
1	outlined by Mr Shoesmith, these counterclaims are not	1	technical aspects of the case, and we have referred to
2	only wholly without merit but, frankly, given the	2	that quite loosely, they deal mostly with our
3	obvious nature of that lack of merit and the time and	3	counterclaim side, and I will shortly ask him to
4	effort and above all the huge expense involved in	4	introduce those aspects to you after I deal with the
5	addressing them, they are little short of scandalous.	5	first preliminary question of the construction of
6	Mr Chairman, unless I can assist you any further,	6	Article 7.1 of the PSC.
7	those are my submissions.	7	After Mr Gunning's comments, I will return and deal
8	THE CHAIRMAN: Thank you very much. Shall we now have	8	again at a high level with certain aspects of the case,
9	a break until 2 o'clock. Does that give everyone enough	9	bearing in mind your other comment, Mr Chairman, that
10	time? We will resume at 2 o'clock with the respondents.	10	you do not want to hear an entire exposition of the case
11	Thank you.	11	again. I am grateful to you for that guidance.
12	(1.09 pm)	12	Hopefully we will hit the high and the low points of
13	(The short adjournment)	13	both parties' submissions. Of course, if you have any
14	(2.00 pm)	14	questions then please do ask them at any point.
15	Opening submissions by MR WADE	15	Like the claimants, I, speaking for myself, don't
16	THE CHAIRMAN: Mr Wade.	16	intend to take you to many of the documents at this
17	MR WADE: Thank you, sir. These are the counter-claimant or	17	point. But, again, if you would like to see any
18	respondents' opening submissions for this hearing.	18	particular document, then please do ask and stop me, and
19	Before I begin, I know I have already made	19	I will probably take you to one or two apart from that.
20	a reservation of rights, but I will just refer back to	20	So turning, then, to the question of PSC
21	those reservation of rights and state them again for the	21	Article 7.1(a), the text is on screen in front of you.
22	record. No need to repeat them verbatim.	22	Otherwise you have seen it in the bundle already today.
23	I will stay on that slide for a little bit. The	23	The first question you need to think about when you
24	difficulties of using slides, I recall that the chairman	24	look at this clause is the rules of interpretation that
25	noted that he likes to receive slides of opening	25	apply to it. In our submission, it is the case of
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	Page 82		Page 84

Adetoun v NB Plc, which guides you on Nigerian law as to 1 a standard which any international operator of a similar 2 2 the interpretation of that clause. You have already stature, any IOC would consider to be acceptable, 3 3 read through that paragraph today. whether it was being applied in Nigeria or in the North 4 There is nothing in particular which is surprising 4 Sea or in the Gulf of Mexico. 5 in the approach taken by the Nigerian courts. They 5 They were not accepting a parochial national 6 formulate it slightly differently perhaps to other 6 standard, but they were looking for the international 7 7 quality of operatorship which is implied by the plain courts, but the basic approach is if the words are clear 8 you don't need to construe them very far, only when 8 language of this clause. 9 9 there is uncertainty do you need to look behind the MR LEW: Do you accept that there can be internationally 10 words. 10 acceptable standards which would be different for 11 In addition to that when looking at this clause, we 11 different oil fields? 12 12 MR WADE: We do accept that, and we accept also that the say you need to look at the context in which the clause 13 was agreed, and that context we have submitted and 13 applicable standards and practices will vary from one 14 14 circumstance to the other. continue to submit relates to the oil and gas industry, 15 and you will be aware, and we have submitted in our 15 So the test does have a -- not a subjective element 16 16 but an element which is directed at the operation that opening, that these types of clauses are quite common 17 and seen in many similar contracts. 17 the operator is conducting at the particular time. That 18 The first point we would make about it is that --18 is why we say that the test that Mr Dyson has asked 19 and this will be obvious, so I apologise for stating the 19 himself can form as a helpful guide to the Tribunal, 20 20 obvious -- this clause was negotiated between two because he is asking: would an organisation with 21 parties and included in their agreement, and it must 21 a significant international experience operating oil and 22 have some meaning. It can't mean nothing. 22 gas fields have considered in the relevant time and the 23 23 relevant actions that what they were doing was The reason why I pause on that point is because, as 24 Lord Hoffmann, in making a point in favour of the 24 acceptable? 25 25 That can help you apply the standard, which the claimant and pausing on the Bolam test, which is similar Page 85 Page 87 1 to the content of this clause, thought that this is 1 parties have agreed to a particular set of 2 quite similar to a test where if there are other 2 circumstances. That is not to say that peer-reviewed 3 companies of a similar nature who would adopt 3 documents can't guide you and shouldn't have guided the 4 4 a particular course of action, this clause sounds like parties. Certainly that's part of the plethora of 5 that kind of test. He was a bit surprised, I think to 5 information sources that operators should have regard to 6 hear the claimant not adopting that test wholeheartedly. 6 and operators complying with this clause should also 7 7 The reason the claimant doesn't adopt that test is have regard to. 8 because they say it is to be construed solely to apply 8 So we have listed a number of sources which we say 9 9 to a test of where there is -- to apply the standards as that the Tribunal can look at, and they include expert 10 to the -- what is their words? -- a standard imposed by 10 opinion. They include IOC manuals and recommended 11 a peer-reviewed document which is written and published. 11 practices. They certainly include trade publications 12 What they also say is that where there is no 12 and academic publication and, of course, the API 13 peer-reviewed standard, then it is impossible for there 13 recommendations and practices. 14 14 to be any standard and, therefore, they can do what they There is one more point that I would like to touch 15 want. That is why they don't want to be in a world 15 on before I hand over to Mr Gunning, and that is one of 16 the claims made by the claimants which can be quite 16 where their conduct has to be measured against what 17 other similar companies would do. They prefer the world 17 easily disposed of. They say that this clause on its 18 where, if it's not a peer-reviewed standard, there is no 18 wording can only apply if we identify a work programme, 19 standard and they are free to do what they want. We say 19 because it applies to preparing work programmes, and 20 that is not the correct construction of this term. 20 they say we haven't identified a work programme. 21 21 What is clear is that when the parties agreed to That is a bit of a red herring, because it was the 22 internationally acceptable practices and standards, they 22 claimants' obligation to work to a work programme, and 23 23 were aiming at something which was higher than just what if they weren't, then they are equally in breach. So it 24 24 a particular operator wants to do or feels is is their obligation to do one. And the suggestion that 25 25 appropriate in the moment. What they were aiming at was if they weren't working to a work programme and were Page 86 Page 88

already in breach then they escape the standard that they were meant to work to because they haven't worked they were meant to work to because they haven't worked to be awork programme; easily dismissed. Himsdes no sense. It is refying on one's own breach to avoid its obligation. MR LFW. Is there a particular work programme that you say that they did not observe or did not follow? MR LFW. Is there a particular work programme that you say that they did not observe or did not follow? MR LFW. Is there a particular work programme that you say done to a work programme, but it was not breached in the sense that the well ware fidfled. It wasn't fidled well. The well wosn't difled properly and ovasn't completed properly and production from it wasn't produced properly. MR LFW. So are you saying that that was not done in accordance with internationally acceptable — MR WADE: Standards. MR WADE: Standards. MR WADE: Standards. MR WADE: And is hat the only work programme you say they didn't work to? MR WADE: Yes. I ann asying it's rrelevant, though. I am saying if they didn't work to a work programme, then they didn't work to a work programme, then MR WADE: Yes. I ann asying if's rrelevant, though. I am saying if they didn't work to a work programme, then they didn't work to a work programme, then MR WADE: With those points, I am going to hand over to they didn't work to a work programme, then MR WADE: With those points, I am going to hand over to they didn't work to a work programme, then they didn't work to a work programme of the programme, then they didn't work to a work programme of the programme, then they didn't work to a work programme of the programme, then they didn	,			Ţ
they were meant to work to because they haven't worked 2 simple. Probably what I am going to start is so 2 sense. It is relying on one's own breach to avoid its 6 sense. It is relying on one's own breach to avoid its 6 sense. It is relying on one's own breach to avoid its 6 sense. It is relying on one's own breach to avoid its 6 sense. It is relying on one's own breach to avoid its 6 sense it is relying on one's own breach to avoid its 6 sense it is relying on one's own breach to avoid its 6 sense it is relying to one's own breach to avoid its 6 sense it is relying on one's own breach to avoid its 6 sense it is relying on one's own breach to avoid its 6 sense it is relying to one's own breach to avoid its 6 sense it is relying to one's own breach to avoid its 6 sense it is relying to one's own breach to avoid its 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense its first is simply this, that oil and gas 6 sense if of sense its deposit a sense its difference its difference its difference its difference its difference its difference is that sense its difference its day on the other on a vork programme and on the occurrence of the clear of the	1	already in breach then they escape the standard that	1	suck eggs, and cut me off if what I am saying is too
to a work programme is easily demissed. It makes no described and commentary to a soft programme and in following that you will regard it as midly offensive. It is this simply this, that oil and gas obligation. MR kLIW: Is there a particular work programme that you say they did not observe or did not follow? MR WADE: The drilling of Cyo-5 and production from it was do done to a work programme, but it was not breached in the seme that the well wasn't drilled. It went that this is a work programme and in following that wasn't comments that are deposited and compacted they do not form a solid mass. Instead, spaces or pores exist between the gruins and the amount of space as a percentage of the total volume of a formation is called its process. MR WADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in accordance with internationally acceptable— MR VADE: So are you saying that that was not done in the water that formed the sedimentary basin. The larger the provisity doesn't necessarily translate to a high recording the formation was the provisity doesn't necessarily translate to a high recording the formation was the provisity doesn't necessarily translate to a high recording the provisity doesn't necessarily translate to a high recording the provi	2			
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5 MR LEW. Is there a particular work programme that you say 7 that they did not observe or did not follow? 8 MR WADE: The drilling of Oyo-S and production from it was 9 done to a work programme, but it was not breached in the 10 sense that the well wasn't drilled. It wasn't drilled 11 well. The well wasn't drilled. It wasn't drilled 12 completed properly and production from it wasn't 13 produced properly. 14 MR LEW: So are you saying that that was not done in 15 accordance with internationally acceptable — 16 MR WADE: So are you saying that that was not done in 17 MR LEW:— standards? 18 MR LEW:— standards? 19 MR LEW:— standards? 20 MR VADE: Correct. 21 MR LEW:— and a fistant be only work programme that you say exists? 22 MR LEW:— and is fast the only work programme you say they 23 didn't work to? 24 saying if they didn't work to? 25 MR WADE: The saying it's irrelevant, though. I am 26 saying if they didn't work to a work programme, then 27 the quality of the work they should have undertaken. 28 MR LEW: Thank you. 29 MR WADE: Correct. 30 MR WADE: Correct. 40 MR LEW: Thank you. 41 the quality of the work they should have undertaken. 42 they didn't apply internationally acceptable standards? 43 MR WADE: With those points, I am going to hand over to 44 they didn't apply internationally acceptable standards? 45 MR WADE: Correct. That's what I am saying. 46 MR LEW: Thank you. 47 The quality of the work they should have undertaken. 48 MR LEW: Thank you. 49 The quality of the work they should have undertaken. 40 MR LEW: Thank you. 41 The quality of the work they should have undertaken. 42 The quality of the work they should have undertaken. 43 MR WADE: Correct. That's what I am saying. 44 The quality of the work they should have undertaken. 45 MR LEW: Thank you. 46 The correct work they should have undertaken. 47 The quality of the work they should have undertaken. 48 MR LEW: Thank you. 49 The quality of the pores so if the pores are well connected in a sponge, there will be high permeable, and this is a point that Mr	4			
6 MR LEW. Is there a particular work programme that you say that they did not observe or did not follow? 7 that they did not observe or did not follow? 8 MR WADE: The drilling of Oyo-5 and production from it was done to a work programme, but it was not breached in the sense that the well wasn't dilled. It wasn't drilled. It wasn't drilled. It wasn't drilled. It wasn't drilled in the well. The well wasn't drilled properly and production from it wasn't group that that wasn't drilled properly and production from it wasn't group that that was not done in a coordance with internationally acceptable— 16 MR WADE: So are you saying that that was not done in a coordance with internationally acceptable— 16 MR WADE: So are you saying that that was not done in a coordance with internationally acceptable— 16 MR WADE: So are you saying that that was not done in a coordance with internationally acceptable— 17 MR LEW: A sundards? 18 MR WADE: Currect. 19 MR LEW: And is that the only work programme that you say exist? 20 MR WADE: It does exist, ws. 21 MR LEW: And is that the only work programme you say they did work to? 22 didn't work to? 23 MR WADE: The service was saying if they didn't work to a work programme, then you know know they should have undertaken. 24 saying if they didn't work to a work programme and in following that work programme and in following that work programme and they didn't apply internationally acceptable standards? 24 MR WADE: Currect. That's what I am saying. 25 MR WADE: With those points, I am going to hand over to the depth of the work they should have undertaken. 26 MR LEW: But it is only in this one area that you say here as a work programme and in following that work programme and the following that work programme and they did the work they should have undertaken. 26 MR LEW: But it is only in this one area that you say here as a work programme and	5		5	
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6 MR LEW: Thank you. 7 MR WADE: With those points, I am going to hand over to 8 Mr Gunning, who will introduce the technical aspects of 9 this case to you. 9 a reservoir. Sandstone by comparison is typically 10 Opening submissions by MR GUNNING 11 MR GUNNING: I was going to try to spend a few moments 12 talking I hope in a neutral way about some of the basic 13 features of fuel reservoirs and drilling operations 14 before giving a short overview of the respondents' 15 criticisms of the steps taken by NAE. I am conscious 16 that this is an extremely experienced Tribunal and that 17 some of the matters that I might be covering are 18 slightly elementary, but over the course of the heatil 29 of the way in which the work was executed, and I wanted 20 of the way in which the work was executed, and I wanted 21 to be sure that you're comfortable with the underlying 22 technical basics, so that such questions as I have 23 aren't incapable of being understood. 24 So forgive me if there is an element of teaching 25 grandmothers – I am not calling you grandmothers – to 6 Certain types of rock are essentially impermeable. 7 For example, shale and silty shale will be basically impermeable. 7 For example, shale and silty shale will be basically impermeable. 8 impermeable, and they will form sometimes a cap on a reservoir. Sandstone by comparison is typically relatively permeable and so it is sandstone formations 11 that tend to contain the sandstone layers that will tend to contain the sandstone layers that will tend to contain the sondstone layers that will tend to contain the sandstone layers that will tend to contain the sondstone layers that will tend to contain the sandstone layers that will tend	4	they didn't apply internationally acceptable standards?	4	a formation, the lower the pressure difference is that
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grandmothers I am not calling you grandmothers to 25 you establish its volume, you establish its porosity,	23	aren't incapable of being understood.	23	be that could be filled with hydrocarbons. So a way of
	24	So forgive me if there is an element of teaching	24	working out the volume of oil in place in a formation is
Page 90 Page 92	25	grandmothers I am not calling you grandmothers to	25	you establish its volume, you establish its porosity,
Page 90 Page 92		Dags 00		Dags 02
		Page 90		Page 92

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1	you establish its water saturation and then you work out	1	area. In addition, at the very top right, there is the
2	what factor you apply for oil as opposed to gas	2	far east area but, as far as I understand it, that
3	extraction, and that will you give you an idea of your	3	remains undeveloped.
4	original oil in place in the reservoir.	4	Now, what you will see is that discovery and
5	Now over geological time, because of the relatively	5	appraisal wells were drilled by Eni in the Oyo west
6	buoyancy of gas over oil and oil over water, you will	6	area, so that's Oyo-3 and Oyo-2, and that was followed
7	get a separation of layers. So as you see on the	7	by the drilling and exploration of Oyo-6. But those
8	right-hand side, and this is a cutaway view of the Oyo	8	wells are quite some way away from the other ones.
9	field, you have at the top a cap of gas and then you	9	So far as the other are concerned, you will see that
10	have underneath that oil and beneath that water. And	10	in 1995 BP and Statoil drilled a discovery well, Oyo-1,
11	the point where the separation occurs between gas and	11	and then two further wells are drilled in close
12	oil is called the gas-oil contact or GOC for short,	12	proximity to that. One is Oyo-4, which I think is
13	you'll see quite a bit of reference to that, and the	13	drilled in 2007 by Eni or NAE, and ultimately that was
14	point where the rock separates between containing oil	14	to be used as the gas injection well for Oyo-5. But
15	and containing the aquifer is called the water-oil	15	they got a certain amount of data about the formation
16	contact, or WOC. So that's a basic Noddy introduction	16	from that. Oyo-5 was then drilled in 2009.
17	to some of the features of a reservoir. Sorry for being	17	Now, the reason why this map is slightly inaccurate
18	basic for it.	18	is because it makes Oyo-5 look as though it is a long
19	LORD HOFFMANN: Speaking for myself, I am very grateful.	19	way away from Oyo-1 and Oyo-4. So I wondered whether
20	MR GUNNING: One of the things that you will see it is	20	I forgot to put in this presentation if you are able
21	sometimes necessary to model the feature of a reservoir.	21	to take out bundle 9, tab 198. (Pause).
22	And the right-hand side is an example of such I think	22	Tab 196, sorry, at page 147, you should have a page
23	that's something taken from a model, and this is done by	23	in the middle of a presentation that was prepared by
24	taking a formation and dividing it into a number of grid	24	Allied, which looks a little bit like that (indicates).
25	cells, and then attributing characteristics, such as	25	So it is G9, tab
	P		
	Page 93		Page 95
1	permeability and porosity to each of those grid cells.	1	THE CHAIRMAN: 147?
2	Then, depending on the computer power of your Apple Mac,	2	MR GUNNING: Tab 196, page 147, is the pagination in the
3	or whatever it is, you can run a simulation of what	3	bundle.
4	would happen if you were to start extracting oil in that	4	MR SHOESMITH: Page 23 of the PDF.
5	formation.	5	MR GUNNING: Thank you. Now what you will see there is in
6	Now, there is a difficulty, as you will see, in	6	the middle of the map a little star with a 1 and
7	terms of the level of detail that you have in each of	7	a little star with a 4, and those are Oyo-1 and Oyo-4,
8	your grid cells, because ideally I mean, the fluids	8	and then you can see that Oyo-5 really runs between the
9	will be flowing essentially through very small areas and	9	two. I could show you other drawings which show the
10	small changes can make big differences, but for the	10	same thing but that's just to make the point that if you
11	purposes of preparing these models often you need big	11	find this a helpful map of the overall Oyo field, do
12	grid cells because otherwise it is impossible to do the	12	bear in mind that it's not perfectly to scale.
13	computing for them, even with the most sophisticated	13	MR LEW: While you're educating us, could you tell us what
14	computers.	14	is the distance in miles or kilometres from the far
15	Now, my next slide was intended to just give you	15	east, let's say, Oyo-5 to Oyo-5, part away across?
16	an idea of the layout of the Oyo field. I found it	16	MR GUNNING: I think it's probably only a couple of
17	exceptionally difficult to find a good drawing of this	17	kilometres, 4.5, there we go.
18	in the bundles. This was the best I could find. It's	18	MR LEW: 4.5 kilometres, so that whole area is from one end
19	in the Erin summer 2015 investor presentation. It's not	19	to the other 10 kilometres?
20	actually perfect, for a reason I will point out to you,	20	MR GUNNING: It is about 700 metres between them but
21	but what you can see is that the field is divided into	21	I thought it was a lot lower. It is about 700 metres.
22	two parts, essentially. On the right-hand side, so the	22	It is a small distance between Oyo-5 and Oyo-1, but, as
23	west side, you have well, on the east side, rather,	23	I say, you see Oyo-1 and Oyo-4 are drilled vertically
	you have something which says the central area, and on	24	and you will have seen the line for Oyo-5 is
24			
24 25	the left-hand side of the screen you can see the west	25	a horizontal line, so it runs between the two of them.
		25	a horizontal line, so it runs between the two of them. Page 96

You will also see that Oyo-7 is in quite close proximity, and I think my learned friend made the point that there are similarities that you would expect between Oyo-7 and Oyo-5.

Oyo-8 is also in close proximity to those wells. There are actually two wells in Oyo-8. I think it was initially drilled vertically but then a horizontal sidetrack was drilled, and there is a difference in the recorded readings from the vertical and horizontal wells which might be important a little bit further down the line.

So that's an overview of the relevant reservoir.

What I want to do is then to move on to the next slide and here I was going to talk a little bit about the casing and the well itself. The diagram on the right that you'll see there, where the text is completely illegible, is a diagram of the subsea well head and I put it up there just to show you essentially the point that the casing runs as a series of concentric pipes of different diameters, but it's like the opposite of a Russian doll, I suppose, because the longest of the casings will be the smallest, but it is hung from a casing hanger, which is at the well head level.

This will be an important drawing I think probably for the purposes of -- or it may be useful for you to

G7, tab 123.

The other document which is very useful is at G8, tab 167, and that is the final drilling report. That contains a description of what was done but also provides you with guidance on how to convert certain depths to other depth, a point I will come to in a moment.

You will see from that slide that at the end of the well bore there was an 8.5-inch hole that was drilled. It doesn't look quite like that, because naturally you don't have quite as strict a curve as that. But essentially within that 8.5-inch hole there was run a pre-perforated pipe with wire wrapped around it that was surrounded by gravel, and because there are perforations, the oil can come in from the -- because of the pressure difference, the oil will seep in essentially to that open hole section and up the well.

You will see from the image that the open hole section was horizontal here. And I think from one end to the other it was something metres or something like that. It is quite a substantial length.

The end that is closest to the vertical part of the well is called the heel. So, if you like, the left-hand side of that diagram on the bottom left, that will be called the heel, and the far end will be called the toe.

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bear in mind when it comes to the question of reciprocation, rotation, those sorts of things. Because the point is made, well, you can't really reciprocate the nine and five-eighths inch casing because you are in close proximity to this well head and if you start twisting things around and jabbering it up and down you might damage the subsea well head, which is a big problem on subsea well, so it wasn't an appropriate thing to do.

In fact, as the casing was being inserted it will have been reciprocated and actually was reciprocated. So the issues, which was a very narrow one, and I think ultimately is not going to lead anywhere, is as to whether it should also have been reciprocated during the period when the cement was being installed, and there is a difference of view about that.

You will see what I've also tried to do on the left-hand side of the slide is to give you an idea of how the casing sizes change as you go down to various depths. I found extremely useful, but you don't need to look at them now, but I think for your note you might find them useful, two documents. One is at G7, tab 123, which is the mud logging report and contains a narrative description of how the casing sizes changed and what work was done as the casings were installed. So that's

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Now, inevitable there is going to be a gap between the casing and the well bore outside it. So when the 9 and five-eighths-inch casing is being run in a hole, the hole that is drilled is actually 12 and a quarter inches wide, and the casing fitted into that. And that gap, or annulus, as it is called, presents a problem, because unless that gap is filled in it creates a gap down which gas can run from the rock that contains gas down to the heel of the open hole section of the well. So in large part to stop that happening cement is injected through the casing and then back up into that annulus.

As the well bore was being drilled originally, drilling fluid will have been used for a number of reasons, so to clear the drill cuttings, to balance fluid pressure, to create a filter cake to stop the well caving in and to lubricate the drill bit. But what it means is that when the casing is lowered in, the annulus will be filled with mud, and the mud will be permeable and so it will provide a leak path for gas from the gas-oil contact down the heel of the well.

So when cementing the aim is to stop that happening, and that brings me on to the next slide.

Essentially the purpose of the cement is to create zonal isolation between the gas-oil contact and the heel of the well.

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,			
1	So what you try to do is you try to flush out the	1	you imagine a kind of crook in the page coming out of G,
2	mud by using something called spacer fluid to start with	2	you will have had cement coming out horizontally and
3	and then the cement afterwards. But the trouble that	3	pushing back and then up vertically.
4	you have, particularly in a horizontal well, is that	4	MR LEW: That yellow band at the top of what looks like that
5	naturally the casing is going to sag towards the bottom	5	the well
6	of the well bore. So that would obviously provide	6	MR GUNNING: Yes.
7	a sort of resistance which would make it more difficult	7	MR LEW: is that the top plug?
8	to remove the mud. To stop that what are used are	8	MR GUNNING: Yes, that I think is intended to show the top
9	centralisers, and the centralisers that were actually	9	plug. There are some underneath it, non-return valves
10	used in this case are shown in the bottom right-hand	10	essentially, to stop this cement spinning back up the
11	corner, and the idea is that those will provide some	11	casing. But essentially the idea is that the top plug
12	separation between the casing and the walls of the well	12	as it goes down will scrape off cement so you don't get
		13	
13	bore.		a leakage of cement down the casing as you're going
14	Now, you will see I put an image at the top	14	down.
15	right-hand corner that shows the sort of problem you can	15	MR LEW: Then what is the central bit? You have the valve
16	have if you're not able to flush out the mud. You will	16	underneath it.
17	have an area that is cemented in the annulus but then	17	MR GUNNING: Yes.
18	an area that contains mud in it, and that is a problem,	18	MR LEW: Then you have got a
19	because it is a channel down which the gas can run down	19	MR GUNNING: This is an image
20	to the heel if it is not cleared out.	20	MR LEW: darker grey.
21	The sequence of events that you will find you	21	MR GUNNING: Yes, this is an image of a completed cementing
22	will come across when we come to the cementing part of	22	operation. I wonder actually it might be useful just
23	the case whenever you say we're coming to the	23	to take out this report, because it will show the
24	cementing part of the case you probably just feel mildly	24	process that I was describing quite clearly. It is G29,
25	depressed that that's what we are going to be talking	25	tab 17. You will find it at page 187.
	D 404		D 402
	Page 101		Page 103
1	about, but it starts off you put spacer fluid down the	1	The section on water actually begins at page 183.
2	casing, you will then want to separate that spacer fluid	2	That's internal page 67 of the report. The top
3	from the cement that is going to follow it. So there	3	right-hand corner of the report says page 67.
4	will be something which is called a bottom dart that	4	THE CHAIRMAN: Sorry, that's
5	goes on top of it, then that will hook into a plug, and	5	MR GUNNING: G29.
6	the plug with the spacer fluid beneath it will sink down	6	THE CHAIRMAN: Yes.
7	the casing, cement will be on top of the bottom of the	7	MR GUNNING: Tab 17.
8	plug.	8	THE CHAIRMAN: Yes.
9	The first cement that goes is called lead cement	9	MR GUNNING: Then in the top right-hand corner of the page,
10	it is not lead, it is lead cement and then following	10	it will say "page 67".
11	that tail cement will be put on top, and then there will	11	THE CHAIRMAN: Thank you.
12	be a top dart and a top plug, and above that there will	12	MR GUNNING: You should find the image that you have on the
13	be mud, and the mud basically forces the cement down	13	screen in that page. So in our bundles it is on
14	through the annulus and then back up down through the	14	page 183 but in the report it is internal page 67.
15	casing and then back up the sides of the annulus.	15	If you go to page 187, you can see an image of in
16	The diagram that I've shown you there in the middle	16	the bottom right-hand corner, which I just lacked the
17	of the page comes from an exceptional if you're	17	computing ability to cut out because it is a funny
18	trying to understand this in more detail	18	shape, this shows a cementing operation in progress. So
19	an exceptionally useful description of the process in	19	you have spacer fluid with two arrows going down to
20	the chief counsel's report on the Macondo incident,	20	those float valves at the bottom of the casing, and
20	which is bundle G29, tab 17, page 187. It is really	20 21	above that you have the bottom plug and then you have
22	an exceptionally clear explanation of cementing	22	the cement, and then above that you have the top plug
23	operations.	23	and then above that you have mud going down the casing.
24	Now, in this case it not quite like this image	24	The idea is that as you push down, the bottom plug will
25	because we have a horizontal well. So in this case if	25	break open and then you will continue to put pressure on
	Page 102		Page 104
	- "5" - " -	1	- "60 1 / 1

the -- continuing to insert mud on top of it, so that will force the cement to come down. As it comes down, it comes out and back up. So if you look at page 188, the next page, it sort of comes up the annulus between the well bore and the casing.

But the top plug should fit in position, as we see here, and essentially cap off the cement at the end of the job.

Then you will want -- ultimately you will want to break is out so that you can then carry on with your drilling, but this is the process. Is that clear enough?

Now, one of the things that you're going to have to consider looking forwards is whether the evidence supports our hypothesis that the relevant steps were not to carry out -- a proper cementing job were carried out by NAE, and as part of that process we will have to move on to one of the numerous logs that's kept on the project, and that brings me to my next topic, which is well logging. For present purposes, I am just going to focus on the characteristics of a well log rather than the content of any individual log.

We're going to be focusing I think on two particular ones, going forwards. The first is the log that was taken from something called the segmented bond tool that will put your gamma ray tools down and that will enable you to work out -- you will have a map of the gamma ray readings going all the way down. There is usually a lot of movement in the gamma ray curve, from high values to low values. So you get a very good, precise sort of fingerprint of the layout of the well.

The other point is that once you have the casing in place, although the radiation measurements are reduced, they are not eliminated. So even with the casing in place you can work out what your depth is in the well bore because of the radiation measurements. So you can get an exact depth measurement once the casing is in place by comparing your cased hole gamma ray log to your open hole gamma ray log. So, in other words, you can match your log as you've been going down with casing in place against where you were when there wasn't any casing in place at all.

So it's very common to find that as a kind of depth gauge in these logs.

The third thing I was going to mention is that typically you will have something that indicates your depth on these logs, and typically the depth that will be shown is called the AHD or a long hold depth. That is not the same as the true vertical depth because the well is going down and across and then horizontal.

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you will have read about, the SBT, and that was sent down the well in December 2009, and it was used to assess the quality -- or meant to be used to assess the quality of the cement job before the open hole was drilled out.

The second log that we will be looking at is the log taken from the production logging tools in December 2010, which showed where gas was coming into the producing part of the well.

But the points I wanted to draw your attention to at the moment are these. The first is when you look at these logs they will have these sort of characteristics. There will be a series of columns and each of those columns is called in the industry, as I understand it, a track. So when there is talk about tracks, the first track, it will be the left-hand column.

The second point is that very commonly you will find that the first track will show something, as you'll see here, called the gamma ray recording, and the gamma ray tools measure the naturally occurring radiation in the well bore. They provide a very good indication of the presence of shale, as it happens, but more importantly they provide a record against which you can then correlate your depth in the well bore once the casing is in place. So before you have put the casing in, you

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What I have tried to do on this slide is to give you some useful figures going forward which identify for you the long hole depth of the gas-oil contact, and then its comparative true vertical depth, and also something called TVDSS, that is true vertical depth subsea. True vertical depths are often corrected to allow for the elevation above the mean sea level of the depth reference point of the well, and there was a 26-metre difference in relation to these measurements.

Then I have given you also the end of the 9 and five-eighths-inch casing, you can find out where that is, and then the end of the 8.5-inch hole. So when I said the horizontal hole was about 600 metres long, you can see it is the difference the AHD measurements on that table.

The final point I was going to make about logs is that you will see that they record different information about different characteristics of the well in different tracks but they also sometimes contain different information in different scales within the same track.

So if you look in the track 1, we have gamma ray readings. We also have minimum delta T and maximum delta T readings, and also we have differential tension readings. They are all to different scales, they are all measuring different things, but they are all on the

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1 same track 1 naturally occurring level of gas in the oil, regardless 2 That brings me on to the next slide, which is the 2 of any incursion from the gas cap. Indeed, the 3 next topic along, which is about producing from the 3 expansion of that gas helps to force the oil up the oil 4 well. The way that oil is produced in a well is through 4 well, because the gas will tend to expand I think more 5 the pressure difference between the reservoir and the 5 than oil will expand when you go to a different pressure 6 well bore. The pressure difference causes oil and gas 6 level. 7 and water to expand out of the rock and into the well, 7 The natural level of the GOR, or gas-oil radio, in 8 and the pressure difference between the bottom and the 8 the Oyo-5 well was measured in a pressure volume 9 top of the well causes the oil, gas and water to expand 9 temperature analysis, which was done in October 2009, 10 upwards. That pressure difference is affected by the 10 and the natural level was found then to be 649 standard 11 choke, and choke measurements are typically given in 11 cubic feet per barrel. So if you had that level of 12 64ths of an inch, and that is the diameter of the choke 12 gas-oil ratio it wouldn't necessarily ring any alarm 13 incidentally. It's not the radius, it's the diameter of 13 bells because you would be expecting that to exist 14 it. So there is a connection anyway between choke size, 14 naturally within the formation. 15 pressure difference and flow through a well. 15 Another point to make is that as the pressure in the 16 MR LEW: What did you say the width was? 16 reservoir reduces, there will come a point where gas 17 MR GUNNING: The diameter of the choke will just be called 17 will naturally bubble out of the oil, and that's called 18 the choke measurement. 18 the bubble point pressure. Where that happens it means 19 MR LEW: You said typically the size --19 that gas can enter the oil stream from further down the 20 MR GUNNING: It will be measured in 64ths of an inch. 20 oily part of a formation. So once that happens, once 21 MR LEW: 64th? 21 you pass the bubble point pressure, you would naturally 22 MR GUNNING: Of an inch, exactly. So when you see 18 22 expect the gas-oil ratio to increase to some extent. 23 64ths -- my maths has failed me. I should have chosen 23 But there's a quite separate process, which it is 24 something simple like 32/64ths, it would be half an 24 very important to understand in this case, because it 25 inch. Sorry about that. 25 I think explains in substantial measure one of the Page 109 Page 111 Anyway. When the fluids emerged from the well they 1 things that went wrong, which is gas coning. That is 1 2 have to be separated out and the quantities of fluids 2 a manner by which gas can migrate from the gas cap into 3 3 will be measured using a separator, and here one of the the production stream. It is called gas coning because 4 4 the gas literally cones down from the gas cap, when the stories that you will come across is that there were 5 meant to be two separators, two functioning separators 5 buoyancy forces that are keeping the gas layer separate 6 on the FPSO, a test separator and a production 6 are overcome. There's going to be quite a lot of 7 7 evidence about this process. But I would just flag two separator. But the fact that there was only one working 8 8 meant that actually the entirety of the streams coming points. q 9 from Oyo-6 and Oyo-5 were being joined together before The first, and perhaps I found most unexpected 10 point, until it was explained to me, is that gas coning separation. We'll have to examine what the consequence 10 11 of that are for the reliability of some of the data that 11 is most likely to occur where the permeability is lower. 12 12 we have The lower the permeability the more likely you are to 13 Finally, I have also given the units of measurement 13 have gas coning. The reason for that is where the 14 that you will come across in the right-hand side. 14 permeability is lower, a greater pressure difference is 15 I found that helpful to have a note of those. They are 15 required to extract the oil. So that greater pressure 16 16 relatively obvious when you know them. I don't think difference results in a greater likelihood of in effect 17 17 there is any significant difference between a stock tank sucking the gas from the gas cap into the production 18 barrel and a barrel. I think they amount to the same 18 stream. 19 thing, but sometimes it is STB and sometimes it is BBL. 19 The second thing, though, which is the opposite end 20 The comparison, though, of the volume of gas that is 20 of that, is that the gas will tend to cone through areas 21 taken at the separator to the volume of oil gives 21 that are more permeable. So although it takes lower 22 a gas-oil ratio, and that will be measured in standard 22 permeabilities to cause the coning to occur, it will 23 cubic feet per barrel. Standard cubic feet of gas per 23 tend to come through the more permeable bits. 24 barrel of oil. 24 So those are the technical features I thought 25 25 And it is important to understand that there is I would take you to and that brings me on swiftly to Page 110 Page 112

1 what it is that we complain about. 1 comply with that. 2 2 I think those fall basically into three topics, the The third thing is that NAE then undertook 3 third, which is flaring, we can take quickly, because 3 an examination of the quality of the cement using 4 you will see in due course the plan was that 98 per cent 4 a segmented bond tool before proceeding to drill out the 5 of the gas that came out of Oyo-5 was intended to be 5 open hole section but they seemed to have done the 6 reinjected into Oyo-4, but because of the high volumes 6 drilling without paying any sufficient regard to what 7 7 of gas that were being produced and the unavailability the segmented bond tool analysis showed. If they had 8 of compressors on the FPSO that didn't happen, and as 8 examined it properly, they would have realised that it 9 a result a lot of the gas had to be flared off, and 9 showed bad cement in the material area, which is from 10 although it is a matter that Mr Wade will be dealing 10 the gas cap or the gas-oil contact point down to the with the claimant agreed to indemnify the respondent 11 11 heel, and that remedial work was required. But they 12 against the fines that were incurred in relation to 12 didn't do that and so a leak path was permitted to 13 that. So that's flaring. 13 remain in place between the gas cap and the well. Cementing and production. What we say in relation 14 14 So that's what we say, and we say that was not in 15 to these is essentially that NAE went about the 15 accordance with internationally acceptable standards. 16 cementing and management of production in 16 That takes me on to the second area of criticism, 17 an uncontrolled and inappropriate manner, and then it 17 which is the management of production. I think there 18 failed to respond promptly or at all to the evidence of 18 are likely to be six questions that you have to consider 19 problems by taking appropriate remedial action. 19 20 So that's the essence of our case. I'm not going to 20 The first is, was it important for the production of 21 take any of the evidence for granted. This is the 21 oil from Oyo-5 to be carefully managed? It's the 22 22 opening submissions, so you haven't heard the facts yet. commencement of production to be carefully managed? 23 MR LEW: You are stating the case and you are saying that 23 The second is, did NAE develop a suitable plan for 24 it's failure to achieve zonal isolation and to recognise 24 opening up the well? 25 the shortcoming in the cement job, that you say was in 25 The third is, what, if any, arrangements did they Page 113 Page 115 1 have in place to enable them to monitor production as 1 breach of industry practice? 2 MR GUNNING: Yes, we do say that. We do. 2 the well was opened up? 3 3 The fourth point is, taking those arrangements, if In relation to cementing there are going to be four 4 4 any, into amount, did they control the opening of the questions that you are going to want to consider at the 5 end of the case. The first is -- and it is unlikely to 5 well sufficiently cautiously? Then, fifthly, when problems were discovered, how 6 controversial -- was the quality of the cementing of the 6 7 7 did they respond? nine and five-eighths inch casing an important process 8 8 for the completion of the Oyo-5 well? That's the first Then the final one, was that response sufficiently 9 9 10 The second is, how did NAE plan to execute the 10 What I hope we will show you through the evidence on 11 11 these topics is that they knew or ought to have known 12 12 The third is, did NAE depart from that plan when that it was extremely important to manage the production 13 executing the cement job and, if so, how and in what 13 process carefully to prevent gas entering the production 14 14 screen, because they knew the proximity of the gas cap. respects did it depart from the plan? 15 Then the final question you're likely to ask 15 They knew that. 16 16 yourselves is, what steps did NAE take to satisfy itself The second is they don't appear to have had 17 17 at the end of the process as to the quality of the job, a satisfactory plan for the opening up of the well, and 18 18 they appeared to have targeted a production rate of and what conclusions should it have reached about it? 19 What I hope to show you, I'm not taking you for 19 around about 15,000 or 17,000 barrels of oil per day, 20 granted, is that the cement job was extremely important. 20 which they should have realised could give rise to 21 21 an early gas incursion. It was essential, as we've seen, to ensure zonal 22 isolation between the gas cap and the heel of the open 22 The third thing is that they were lacking basic 23 23 hole section of the well. information about the performance of the wells at the 24 Secondly, NAE did have a plan of sorts which was 24 time that they opened them up. So they weren't able to 25 25 prepared with or by Schlumberger but then it failed to monitor the performance accurately and so didn't control Page 114 Page 116

29 (Pages 113 to 116)

the opening up of the wells appropriately. Then within a week or so of opening up the well, the gas-oil ratio had risen to levels which suggest a gas incursion. They were way above that level -- or they began to be consistently above the natural GOR that you would expect, but they didn't do anything about that for about six months. Indeed, the action that they ultimately took was to undertake a work-over sequence in December 2010 to January 2011, which comprised using a production logging tool and then a gas shut-off operation. But by that time it is clear, I think, that gas coning had occurred and the GSO operation that was undertaken was not able to rectify the problem of gas Now, we can see some of the difficulties that were

Now, we can see some of the difficulties that were experienced in the aftermath of opening up the well in the next slide, which shows the declining rate of production from Oyo-5. Red against a scale of thousands of barrels on the left is the number of barrels that were being produced per day from 5 December onwards. So there's a spike to start with for a small number of days, then it relentlessly falls downwards. But running across that you have a continually increasing gas production rate and gas-oil ratio.

You will notice at the top of the black line is

to go to. So there's a dispute on the expert evidence what you can draw from that. But certainly this would be consistent with poor cementing.

But what you will also see is that the gas incursion was not limited to the heel. The measurements are not -- so that's at the first 20 metres or so from the heel you have a lot of gas going in, and then you have a little patch which is running for about another 70 metres or so, where there is gas coming in but not so much. Then you get to the next little patch, which is about a 10 or 11-metre patch, where again you have a lot of gas coming in and so on.

What this shows is that as you go further down the production part of the well, you have gas coming in which is evidence of gas coning. So that is what was discovered to be the position as at December 2010.

That leads me to the gas shut-off. You can see the effect of the gas shut-off on this slide. You have to read it with a little bit of care because in the middle of it what you see is a period where the gas rate slumps to a very low level, or the gas-oil ratio slumps to a very low level. That's because the well was shut off. It was closed for a substantial period before the GSO operation was carried out. So there is a little spike as that's happening but then it falls down.

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shown the choke settings at the time that those measurements were taken. So as the choke settings increased, you can see that there were increases in the gas amount and the gas-oil risk.

Now, a snapshot of the gas ingress into the producing part of the well can be seen from this image, which is the result of the production logging tool analysis in December 2010. What it shows is that over -- if you look at the right-hand side, the green blocks represent the proportion of all oil. Red blocks represent the proportion of gas. Blue will be water. So there is very little water coming in for the first seven or so rows, but the very first row is at the heel of the production part of the well. What you are seeing there is a very high amount of gas incursion coming in through there.

Now, you're going to have to consider -- there is a dispute on the expert evidence about this -- whether that evidences the likelihood that there was a channel running down from the gas-oil contact down through the casing, because this is the first point where that would be expected to come in, is at the heel of the well.

Equally it will be said that the pressure difference is always going to be greatest at the heel of the well, and so it is the most natural place for the gas coning

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But what you can see essentially is that after the GSO the amount of oil that was being recovered continued to decline and the gas-oil ratio continued to increase. So the GSO was not successful in the sense of stemming the problem of gas incursion. I don't think there is any dispute about that.

Now, that leads me to the final point that I was going to make, which is on the question of causation. Here NAE, through its expert Mr Filippi, runs the argument that in effect the gas incursion and the change in GOR rates and so on were essentially unavoidable, and they say the characteristics of the well and its proximity to the gas-oil contact meant that there was always going to be gas coning. I think their evidence will be to the effect that their model shows that serendipitously for NAE by opening it up rather aggressively or quickly they happened to achieve the optimal economic recovery. We will have to look at that evidence fairly carefully. But this chart provides a comparison of the consequences of managing all four of the active wells, Oyo-5, 6, 7 and 8. And when you do look at these charts you do need to be very careful about the scale. Because sometimes these are shown to a log scale on the left-hand side, which completely masks the differences between the wells. But Oyo-5 is

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the red one and it shows how the GOR changed for the cumulative barrels of oil, and it shoots up basically, and, indeed, it goes off the scale on this particular chart. It goes up to in excess of 20,000 standard cubic feet per barrel.

By contrast what you have there is Ove 6, which is

By contrast what you have there is Oyo-6, which is bumbling along at a much lower level. Oyo-6 doesn't even have an associated gas cap, so it is not really comparable, and you wouldn't be expect it to be behaving in the way of Oyo-5. But of interest is the fact that Oyo-7 and Oyo-8, which are in the same reservoir but being managed with a lower rate of production, are not showing the same gas-oil ratio at all.

So what this shows, I invite you to draw from it, is that actually more cautiously managed there did not need to be this huge gas incursion or gas-oil ratio, and those things have not happened on Oyo-7 and Oyo-8. I think my learned friend took you to a slide on Oyo-7 for the purpose of saying look at the purpose of this the gas -- the oil recovery is reducing. Be careful with that slide because you need to take into account he chock sizes as that was happening, and the choke sizes change in Oyo-7, and those explain the production.

If you're looking at the GOR, which is also on the slide, you need to look at it by comparison to the GOR

novation question and exclusions of liability, which have been touched upon. After that, I will make some comments about NAE's adjustment claim against Allied, and I will not deal with the deferred payments claim at the moment, because it is subject still -- well, much of the debate is subject still to the court's decision, and that is pending, but also because the issues have been addressed in submissions and probably don't need to be repeated at this time.

Again, if there are any questions, of course I will be happy to answer them.

So on the slide presentation you see a copy of an agreed table from the agreed witness statement, the agreed quantum expert report. I must tell you now that this is the agreed statement that will change because Mr Moy's revision will result in some changes to the quantum model, and I will touch on that in more detail in a minute. But I understand that the figures on the bottom three left-hand rows and the total will change. It doesn't matter for current purposes how they will change but I just wanted to make it clear that that is about to change.

The issue of quantum gladly, perhaps, is one of less complexity than the technical issues, and we are indebted to the services of both sides' quantum experts

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on Oyo-5, and you can see from this that the profile is really completely different. So in short, what we say is that if the production

had been managed more cautiously and if there hadn't been a leak down this cementing, then the problems that were encountered (inaudible) could have been avoided.

That's the end of my section. I'm sorry for ...

MR WADE: So that was in the end of the interesting section, and I wonder if we might have a convenient break now for a cup of coffee and to relieve the transcribers?

11 THE CHAIRMAN: Yes. Shall we take 15 minutes? By the way, 12 to the extent we've used PowerPoints or whatever, if you 13 can send those on electronically to the Tribunal that 14 would be appreciated. We will see you back in

15 15 minutes.

16 (3.05 pm)

(A short break)

18 (3.18 pm)

19 MR WADE: May I?

20 THE CHAIRMAN: Yes, please.

21 MR WADE: So Mr Gunning has just shown us the inevitable 22 consequences of the failure to manage production from 23 Oyo-5, and in the next few moments I plan to spend some 24 time talking about the financial consequences and effect

of that, followed by a few brief comments on the deed of

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in that regard because there is almost more common ground between them than there are matters which separate them.

The most important common ground between them is that both experts agree that Mr Taylor's model properly models the PSC and properly reflects the manner in which the losses caused to the counter-claimants and their affiliates result from NAE's breaches of the PSC. And I should say, if proven, because that is not a matter for the quantum experts but they are assessing the economic consequences of the breach.

So they agree on how you should -- or how the damages should be calculated in this case. You will see as a result on the columns on each side it predicts for both parties. Both parties' experts predict that damage had occurred to Allied. There is a magnitude of difference between them but it's nevertheless an interesting feature of the claimants' case that even on their best case scenario they predict a loss to the counter-claimants resulting from the breaches which are alleged.

In our submission, that's an unusual feature of this case and it's a signpost for the Tribunal as to where we're going to end up, and the big question we say is going to be not was there a breach but how much damage

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THE CHARMAN: In fact because they were higher prices a comple of years ago. The other points which I would like to tell you to disagreement. The first and most important point of disagreement. The first and most important point of disagreement. The first and most important point of most which and the calculate the loss? Dr Moy's production forecasts, are they input into the model, in which case you get the damage subject to the change which is on the left-hand side of the table, or do you must MF Hippi? If MR NESBITT. MF Filippi, I was also mispronouncing it. MR WADE: So MF Filippis model would result in the damages on the right-hand side of that table. The second big point of disagreement or the point of disagreement which Mr Neshot has a levely highlighted, and I am repeating that to say that they would have been drilled, the greater the income in they would have been drilled, the greater the income in they disagree and it has a significant import on the Page 125 MR KADE: It was a significant import on the Page 125 THE CHARMAN: In fact because they were higher prices a cample of years ago. MR LEW: I think my point about quantities is that the oil is still there. Even if you sake to produce if we not a count of the result of you're doing a net current valae of rit, it will discount in the cash flow but or and you're doing a net current valae for it, it will discount in the cash flow but and a lesser amount than its current valae for it, it will discount in the cash flow but and a lesser amount than its current valae for it, it will discount in the cash flow but and a lesser amount than its current valae for it, it will discount in the cash flow but and the later the cash flow to fire world. In the assert an of the second big financial consequence as well. The earlier they would have been drilled, the greater the income in they disagree and it has a significant import on the cash flow of the later the less income in they disagree and it has a significant import on the cash of the later the brut for world	Day 1			10 Julie 2010
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25 taken into account 25 Although the claimants tell us that this is an issue			1	
	25	taken into account	25	Although the claimants tell us that this is an issue
Page 126 Page 128		Page 126		Page 128

1	which you haven't decided because you didn't make	1	they are entitled to an indemnity of any losses they
2	a ruling on it specifically, the finding that you did	2	have suffered, including as a result of breaches of the
3	the ruling that you did make was at paragraph 241 of	3	PSC by themselves and by their affiliates. That, of
4	your award, and by a majority then you decided that	4	course, answers, and I do so without the necessary
5	clause 11.1 of the SPA:	5	detail at the moment, but it also answers the question
6	" does require the claimant to indemnify Allied	6	of whether it is right or wrong that CPL didn't bring
7	in respect of pre-economic debt liabilities, including	7	a case in its own name in these proceedings.
8	under the PSC losses suffered by Allied and its	8	Under clause 11.1 it doesn't need to and, therefore,
9	affiliates, subject to the limitations and under	9	it didn't, but there would be a question of whether it
10	provisions of the SPA."	10	would be allowed to under the SPA. But the SPA
11	You may recall, although you didn't say so expressly	11	expressly allows Allied to recover CPL's losses, and
12	here, that that was in response to arguments that the	12	that is, of course, part of the allocation of
13	counter-claimants should not be allowed to rely on	13	liabilities between the parties to the particular
14	claims under clause 11.1 because of the effect of the	14	contract. But they were also contemplating expressly
15	third novation.	15	the inter-group and intra-group liabilities, and they
16	So this, in our submission, is the starting point.	16	were thinking the losses aren't all going to accrue to
17	From here you start and you don't need to revisit the	17	Allied, and so Allied is entitled to claim in respect of
18	novation point at all. This is your fixed point of	18	its affiliates. That is expressly recorded in the SPA
	reference for starting and analysing the SPA.	19	but also in your award. That is the point from which we
20	You already have our arguments in a sense, because	20	start in this part of the proceedings.
21	you've heard them and they are recorded both oral	21	The third argument we made in our pre-hearing
22	arguments and our written arguments are before you. But	22	submission preliminary point, sorry, in our
23	in case it is necessary, then the real arguments don't	23	preliminary issues submissions to you, which you might
	change at all.	24	recall, of course, was that the deed of novation was
25	This is a case by the way that NAE has run not only	25	a forward-looking document, and we analysed clause 2,
	Page 129		Page 131
1	before you and failed. They ran it again before the	1	and we looked also and just stop me if this is not
2	High Court in their jurisdictional challenge in	2	just sparking memories for you but you want to go to the
3	an attempt to reverse your ruling on the grounds of	3	provisions, we looked at the provisions of clause 2 of
4	jurisdiction, and there they failed too. So if we are	4	the deed of novation, all of which is forward-looking,
	now going at the third bite at this particular cherry,	5	the language of all of which is forward-looking, and we
6	then we will meet that challenge as necessary.	6	looked at the exclusion of Article 17.2 of the PSC,
7	The key points are that the SPA itself operates as	7	which you may recall.
8	an allocation of liabilities or does contain	8	Do we have that on a slide? No, we don't.
9	an allocation of liabilities between Allied and NAE, and	9	And Article 17.2 of the PSC is an Article under
10	that allocation of liability was very carefully	10	which NAE would remain liable for the PSC going forward,
11	negotiated and executed.	11	not only retrospectively but prospectively as well and,
12	And the novation by contrast was just a mechanical	12	therefore, in line with the allocation of liabilities
	vehicle by which the transfer of the duties of NAE under	13	from the pre-and post-economic dates, so from the
14	the PSC was moved to Allied. So you will recall,	14	economic date the prospective liabilities of NAE were
	perhaps, that under the deed of novation sorry, I am	15	expressly excluded by excluding the effect of
16	not flicking ahead fast enough the key provision	16	Article 17.2 to the PSC.
	which allowed you to conclude that the deed of novation	17	I am conscious that for you Lord Hoffmann this might
		1.0	not spark any memories and shouldn't really.
17 18	didn't affect the allocation of liabilities between the	18	not spark any memories and shouldn't really.
17 18	didn't affect the allocation of liabilities between the parties was clause 3, which expressly says that nothing	19	LORD HOFFMANN: I have seen some of the documents.
17 18 19			
17 18 19 20	parties was clause 3, which expressly says that nothing	19	LORD HOFFMANN: I have seen some of the documents.
17 18 19 20	parties was clause 3, which expressly says that nothing in this deed of novation affects the rights between	19 20	LORD HOFFMANN: I have seen some of the documents. MR WADE: So I am quite happy to leave it there, on the
17 18 19 20 21 22	parties was clause 3, which expressly says that nothing in this deed of novation affects the rights between Allied and NAE as agreed in the SPA.	19 20 21	LORD HOFFMANN: I have seen some of the documents. MR WADE: So I am quite happy to leave it there, on the basis that we will probably revisit this issue in the
17 18 19 20 21 22 23	parties was clause 3, which expressly says that nothing in this deed of novation affects the rights between Allied and NAE as agreed in the SPA. Those rights as between Allied hopefully I'm	19 20 21 22	LORD HOFFMANN: I have seen some of the documents. MR WADE: So I am quite happy to leave it there, on the basis that we will probably revisit this issue in the closing submissions and move on. If you want to revisit
17 18 19 20 21 22 23 24	parties was clause 3, which expressly says that nothing in this deed of novation affects the rights between Allied and NAE as agreed in the SPA. Those rights as between Allied hopefully I'm going backwards to the right place those rights as	19 20 21 22 23	LORD HOFFMANN: I have seen some of the documents. MR WADE: So I am quite happy to leave it there, on the basis that we will probably revisit this issue in the closing submissions and move on. If you want to revisit any of those clauses and discuss them with me with them
17 18 19 20 21 22 23 24	parties was clause 3, which expressly says that nothing in this deed of novation affects the rights between Allied and NAE as agreed in the SPA. Those rights as between Allied hopefully I'm going backwards to the right place those rights as agreed between Allied and NAE are those which you	19 20 21 22 23 24	LORD HOFFMANN: I have seen some of the documents. MR WADE: So I am quite happy to leave it there, on the basis that we will probably revisit this issue in the closing submissions and move on. If you want to revisit any of those clauses and discuss them with me with them open, I will do so.

1	MR WADE: So now turning to NAE's legal defences. NAE has	1	this, and Nigerian law, unlike English law, prohibits
2	raised two legal defences to the claims against it.	2	revision of contracts by conduct where there is a no
3	The first is that Allied has agreed to vary by	3	variation clause which requires variations in writing.
4	conduct waive its claims under the PSC or vary them.	4	Turning then to the exclusion of limitation clauses.
5	So those are the two defences that they raise on grounds	5	Mr Nesbitt introduced the issue to you, and two of
6	of the operation of law. Our response to both of those	6	you will recall it from the preliminary issues hearing
7	is quite similar. NAE in its submissions hasn't taken	7	as well. Mr Nesbitt took you to some pre-contractual
8	account of the requirements of those defences, and under	8	exchanges of emails, the point there being really
9	Nigerian law and this is at H1, is the reference, is	9	whether all of Allied's claims under any contract are
10	the case H1, 19 under Nigerian law to prove waiver	10	excluded by the wording of clause 12 of the SPA.
11	you must show that the representor intended to effect	11	The first point we make returns to the issue of the
12	•	12	•
	the legal relations between the parties.		allocation of liabilities between the parties, and we
13	There is no evidence at all, because it wasn't the	13	say that you should read clause 12 in that context. We
14	case, that in anything that Allied did they intended to	14	have a carefully negotiated agreement in which pre- and
15	change the legal relations between the parties.	15	post-economic date liabilities were divided expressly
16	Anything that they did was pursuant to the legal	16	between the parties, and the Tribunal has to think of
17	framework in which they were operating under the PSC,	17	how clause 12, which has exclusions of liabilities,
18	and so any participation in Opcom meetings, any	18	operates within that.
19	compliance with subsidiary agreements, any secondments,	19	It is against that background that you need to look
20	it was all done within the framework of written	20	at what is being excluded. The language of clause 12
21	agreements and concluded agreements, and were not	21	and tell me if you want to have a look at it is at
22	intended to vary any of the terms of the PSC at all.	22	THE CHAIRMAN: Whichever you prefer.
23	In any event, and this is another point that NAE	23	MR WADE: You may recall that otherwise we can open up
24	would have to prove, and I can't show that they relied	24	clause 12, which is at
25	on any representations by NAE, in the sense that we've	25	THE CHAIRMAN: I just happen to have it almost open in front
	Page 133		Page 135
1	heard earlier today how NAE claims that Allied was fully	1	of me. That is my reason
2	participating in all of the operations and receiving	2	MR WADE: It is at bundle A, tab 1, page 26. Throughout
3	information and engaging in management decisions. That	3	clause 12 you will see constant references to "exclusion
4	is a line of argument which we have referred to as the	4	of liability for Claims". It is that provision which
5	jointly agreed fallacy in our submissions. It is	5	the respondents and counter-claimants rely on, when they
6	a fallacy because it is factually unproven. But it is	6	say that nothing in clause 12 relates to the claims that
7	also a fallacy in circumstances where NAE's witnesses	7	are being advanced by Allied and CINL and on behalf of
8	tell you in their statements, for example Mr Carbonara	8	CPL, because all of clause 12 and it doesn't matter
9	at paragraph 63, or Mr Cherri at paragraph 51, they tell	9	where you point at, but all of clause 12 relates to
10	you that the Allied operatives were not people that they	10	capital C claims. When you turn at page 5 of the bundle
11	trusted. I accept that I am paraphrasing here, but they	11	or, indeed, 5 of the contract itself to the definition
12	do indicate a degree of lack of respect towards the	12	of "Claim" you see that:
13	technical abilities of Allied's personnel, and to	13	"A Claim means a claim means a claim for any breach
14	an extent Allied's personnel themselves would accept	14	or alleged breach of any of the warranties or any other
15	that compared with Eni and NAE's experience, they were	15	claim for any other breach of this agreement."
16	the weaker party and they did not expect and would not	16	Now, I would ask you to of course, you don't have
17	have expected NAE or Eni to rely on any of their	17	to but I would ask you to underline the term "this
18	recommendations or proposals. Indeed, they weren't	18	agreement" because it is a defined term and because its
19	relied upon. The same arguments are equally an answer	19	the point that I wish to emphasise to you. It is
		20	breaches of this agreement in respect of which any
20	to the variation defence which is raised also in its	1	
21	pre-hearing submissions.	21	matter is excluded.
22	In relation to variation, the position is slightly	22	The definition continues:
23	stronger from the counter-claimants' position because	23	" in respect of this agreement or in respect of
24	Nigerian law is very clear on the effect of no variation	24	any matter arising out of this agreement or any of the
o -			
25	clauses, and we have Nigerian authority in the bundle on	25	completion documents."

1 So you can look it up, but the completion documents 1 therefore, you don't have jurisdiction under the PSC. 2 2 are the deed of novation and the deed of assignment. Having accepted our position and the correct 3 The completion documents do not include the PSC, of 3 interpretation of the SPA in that regard, it is 4 4 impermissible, in our submission, for NAE to change tack 5 As arbitration lawyers you might be thinking to 5 and say to you now the "Claims" has no meanings. yourselves, well, if it's any matter arising out of, 6 6 The final point, and I make this with the 7 7 then that sounds a lot like Fiona Trust and, therefore, reservation that about -- a caveat about the importance 8 it's any matter arising out of or in connection with it 8 of pre-contractual exchanges which in fairness would be 9 will include the PSC, and that is indeed the 9 said against me have been relied upon by both parties in 10 jurisdictional ruling paraphrased that you made. But 10 this arbitration for context. But as far as they are 11 this is not an arbitration contract, and this clause, 11 dispositive, it is probably fair to say that when 12 together with clause 12, needs to be read within the 12 Mr Malek made concessions in emails accepting deletions 13 context of the SPA generally, and the context of the SPA 13 of parts of clause 12, you don't know and you can't know 14 is that the parties negotiated and agreed an economic 14 whether he did so because he was alive to the definition 15 separation of liabilities up to the economic date and 15 of "Claims". And, in our submission, he must have been, 16 from the economic date, and the exclusion of liabilities 16 having drafted the contract. So when he gave up the 17 and the references to "Claim" makes sense in that wording you were referred to before in clause 12, he did 17 18 context. 18 so in the full knowledge that it made no difference 19 You will notice also, although perhaps it's not the 19 whatsoever. It made no difference because the 20 strongest of my points, that there is no express 20 definition of "Claims" protected the rights he wanted 21 reference to -- although there are claims for breach of 21 protected in any event. 22 22 warranty, there is no express reference to claims for So to the extent that pre-contractual correspondence 23 breach of an indemnity. Of course, the indemnity is 23 and exchanges have great weight or not, in this case 24 an entirely different animal to the warranties. It is 24 they have done in relation to these. Of course, in 25 25 expressly stated in the indemnities that Allied may relation to the pre-contractual exchanges that we rely Page 137 Page 139 recover damages or the losses of affiliates. That 1 on, the position is entirely different and we will get 1 2 wouldn't be the same for any other type of claim under 2 3 3 THE CHAIRMAN: We've understood the parties' flexibility the SPA. 4 Now, there are two more points that I would like to 4 about relying on pre-contractual exchanges. 5 5 make orally about -- well, there will probably be more MR WADE: Okay. So that was my final point on the issue of 6 the clause 12 exclusions. 6 than two, but two that immediately come to mind that 7 I would like to make orally about our submissions in 7 No, that wasn't the final point. My slides correct 8 8 this regard. I suppose the first preliminary point 0, me. The final point is that you should test -- whenever 9 Q you think carefully about the clause 12 exclusions you then, is that these are submissions which you accepted. 10 So, again, our starting point is already from a position 10 should test the exclusion in relation to the terms of 11 where you have understood our submissions in relation to 11 indemnity 11.7, which is the gas flaring indemnity. The 12 12 background to the gas flaring indemnity is that it was clause 12 and you've made a ruling as to the operation 13 of clause 11.1 and 11.2, but 11.1 in particular. 13 entered in circumstances where the parties had already 14 14 been told they were going to be fined for gas flaring The second is, of course, we were deeply concerned 15 as to the correctness of our submissions to you until 15 and Allied had been complaining about the gas flaring 16 for a great deal of time and NAE had done nothing to 16 the jurisdictional hearing in which your first award was 17 correct it. In these circumstances, the indemnity at 17 challenged. Our concern was alleviated at that point 18 18 clause 11.7 was entered into and NAE accepted liability because counsel for NAE made the very same submission 19 19 against us in that case. The reference for that is at for all of the gas flaring, for any fines arising from 20 G26, tab 676, page 28, and lines 7 to 11. The argument 20 the gas flaring, up until the economic date. 21 he was putting there was that, even though you have 21 The parties negotiated that from the economic date 22 22 jurisdiction under clause 11.1 to address claims under Allied would be responsible for any gas flaring and any 23 23 fines that arise in relation to that. If NAE's current the indemnity in clause 11.1, you can't have parallel 24 jurisdiction for claims under the PSC because of claims 24 view of clause 12 is correct, then this indemnity has no 25 25 meaning whatsoever. That applies also by the way in being "Claims" aren't claims under the PSC and, Page 138 Page 140

1	relation to thinking about the novation. The parties	1	like and I say this with almost certainty that NAE
2	took the trouble to negotiate a set of indemnities,	2	was aware that Allied had served the dispute notice on
3	including an indemnity for events of which they were	3	time, and they weren't aware of it from the very first
4	well aware, and then by some magical operation of	4	moment but they became aware of it and they concluded
5	clause 12 those provisions are emptied of any content.	5	that it was served on time.
6	If that is the case, if clause 12 applies to disapply	6	MR LEW: You just said that this has come about from
7	the first half of clause 11.7, why did the parties enter	7	disclosure.
8	into it at all? Did they intend clause 11.7 to be	8	MR WADE: It has come about
9	disapplied? Was this a gotcha moment on behalf of Eni	9	MR LEW: Can you take us to those documents.
10	or NAE? Did NAE think to itself "Well, excellent"?	10	MR WADE: Yes, I will. So let's go there, please. The
11	I don't think so, I think parties must be taken to have	11	first document I would like to take you to is
12	negotiated in reasonable good faith and they would not	12	THE CHAIRMAN: Before you take us to their documents that
13	have intended to agree one provision and then close it	13	you received on disclosure, am I correct that your case
14	out by the back door.	14	is that Allied sent the notice to Abuja?
15	So that's probably my last submission on the	15	MR WADE: Correct.
16	exclusion clauses.	16	THE CHAIRMAN: And that somebody at NAE in Abuja sent to it
17	Turning then to NAE's claim against Allied how	17	somebody else in Port Harcourt?
18	are we doing for time?	18	MR WADE: Correct.
19	Do I have another 15 minutes or so?	19	THE CHAIRMAN: And that the stamp is, therefore, the Port
20	THE CHAIRMAN: Yes.	20	Harcourt stamp but it is not the Abuja stamp?
21	MR WADE: Yes. (Pause).	21	MR WADE: And that is now no longer disputed. NAE now
22	So, first of all, again I must make my submissions	22	accepts that that is the Port Harcourt stamp.
23	here without prejudice to all of the various	23	THE CHAIRMAN: But you actually have no record of how it was
24	jurisdictional and other objections which we have	24	sent by Allied to Abuja?
25	pending.	25	MR WADE: Well, we have. The only evidence you have and the
	Page 141		Page 143
1	I would like also to point out, of course, that we	1	only evidence in this arbitration, which is uncontested
2	have dealt with the adjustments claim that is being	2	as of yet, is that Mr Kamoru Lawal emailed it from
3	levelled by NAE against Allied at great length, for	3	Houston to the Abuja office from where it was delivered,
4	example in our rejoinder and reply submissions at B1,	4	probably by hand, possibly by courier, although the lack
5	480 to 485. There are numerous references here, but the	5	of evidence of a courier would suggest that it was
6	short point here is that we maintain the arguments that	6	delivered by hand, and this was common practice in
7	we have made in the past. So these submissions don't	7	Allied, to
8	replace them.	8	THE CHAIRMAN: Do we have a copy of that email?
9	One of the key issues, though, which has arisen and	9	MR WADE: We do. We do not. We have searched. You ordered
10	has been addressed today as well is the issue of the	10	us to search and we did search. And we don't.
11	dispute notice and its timeliness.	11	Nor do we have a copy of a later email in which it
12	It has been put against us from the very beginning	12	was sent somewhere else. It is a lacuna in our case,
13	of this arbitration, although in fairness not before	13	but we have witness evidence from the person who sent it
14	then, that the dispute notice was served late. It was	14	as to how it was sent, and that will no doubt be tested.
15	served on 15 August, instead of on 9 August. There is	15	THE CHAIRMAN: I had forgotten about that, but could you
16	a stamp to show it. Our clients, the respondents, have	16	remind me, did the signatory of the letter indicate that
17	been puzzled about this, knowing full well, as	17	he was in Houston on that day
18	Mr Kamoru Lawal's witness statement evidences, that they	18	MR WADE: I believe so.
19	had disputed the dispute notice on the 8th or the 9th at	19	THE CHAIRMAN: in his witness statement?
20	the latest. They were very confused by this, and we	20	MR WADE: I believe he was in Houston. It was emailed
21	have been through a lengthy process of making enquiries	21	from
22	and asking for disclosure and eventually obtaining	22	THE CHAIRMAN: I don't recall that.
23	disclosure, which shows that our clients were right.	23	MR WADE: It was emailed. I have met him in Houston so
24	Not only are the respondents correct that they	24	I assumed he was there. He was travelling.
25	submitted the dispute notice on time, but it looks	25	MR LEW: He emailed it from Houston?
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1	MR WADE: I understand that it was emailed to Abuja.	1	like to take you, please, to an earlier tab in that
2	I should clarify	2	document, which is the tab before.
3	MR LEW: Okay. So there ought to be a place from which it	3	LORD HOFFMANN: 579.
4	was emailed and a place at which it was received.	4	MR WADE: This is an email in response from Mr Caropreso.
5	MR WADE: Correct.	5	Internally he was asked whether he has received any
6	MR LEW: And that hasn't	6	dispute notice.
7	MR WADE: It has not surfaced notwithstanding our best	7	Initially he answers no in this email, "I haven't
8	efforts, and we	8	received anything but I sent this letter."
9	MR LEW: Assume that occurred, somebody printed out the	9	MR LEW: Which document are you looking at?
10	letter.	10	MR WADE: Sorry. (Pause).
11	MR WADE: Somebody in Abuja printed out the letter, yes.	11	Sorry, I have
12	MR LEW: And delivered it.	12	THE CHAIRMAN: I accept the blame because I interrupted you.
13	MR WADE: Correct, by hand and we have not been to	13	MR WADE: Yes, and I apologise for that blowing me off
14	identify	14	course. Now, may I ask you please to turn to tab 578 in
15	MR LEW: You are presuming by hand.	15	the same bundle.
16	MR WADE: We are presuming by hand because there is no	16	MR LEW: What was the document you had us at before?
17	courier document.	17	THE CHAIRMAN: We're now going to start at 578.
18	MR LEW: So is there somebody who can actually say	18	MR WADE: If we can start at 578 and there is an email in
19	"I printed it out and I took it"?	19	English at the bottom of the page.
20	MR WADE: No, there is not. Not for lack of asking. There	20	At the bottom of the page Mr Giannini asks
21	is nobody who can recall it.	21	Mr Caropreso whether, having delivered the final
22	LORD HOFFMANN: You started off by saying that there were	22	adjustment statement on 24 July, and that's in the
23	documents disclosed which made your point, and I don't	23	first, did Allied ever respond with a dispute notice,
24	think we've seen them yet.	24	and that's final paragraph, in accordance with
25	MR WADE: No, we haven't seen them yet we're getting there.	25	clause 5.5 of the SPA?
	Page 145		Page 147
1	We're recalling the background	1	Mr Caropreso replies at the bottom of that page by
2	THE CHAIRMAN: We're getting there.	2	saying:
3	MR WADE: I think is what the chairman was trying to do.		
4	, ,	3	"I confirm that we have not received any dispute
4	Is that correct, sir?	4	"I confirm that we have not received any dispute notice in relation to the final adjustment"
5			
	Is that correct, sir?	4	notice in relation to the final adjustment"
5	Is that correct, sir? THE CHAIRMAN: Absolutely. Why don't we go to the	4 5	notice in relation to the final adjustment" He i s writing on 27 August:
5 6	Is that correct, sir? THE CHAIRMAN: Absolutely. Why don't we go to the disclosure documents? (Pause).	4 5 6	notice in relation to the final adjustment" He is writing on 27 August: " and I attach the letter which I sent on
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			J
1	desk for at least almost two weeks, he hadn't noticed	1	Mr Giannini says:
2	it. That is why he sent on the 23rd the letter to	2	"With regard to the letter received from Allied
3	Allied, and that is why also on the 27th he sent the	3	relative to the final adjustments for the Jan/June 2012
4	internal email saying "We haven't received anything".	4	costs we are preparing a draft report reply in which we
5	But then he reached the bottom of his pile of papers	5	state that we are willing to hold a meeting in order to
6	on his desk, or something else occurred, and he	6	establish the definitive amount."
7	discovered that the dispute notice had been sent. We	7	And so if you go back to his previous email, you
8	don't know how he discovered it, but it is now	8	know that he was going to do that if the investigation
9	acknowledged that it was discovered.	9	revealed that the dispute notice was served in time. So
10	We also understand that the 15 August stamp was	10	on 29 August Mr Giannini says "Well, if it was turned in
11	applied by Mr Caropreso's secretary, after it was	11	time we are going to open a dialogue and we are going to
12	received in his office. So it was not applied in Abuja	12	agree or try and agree" well, I imply that from the
13	at all but it was applied in Port Harcourt. We don't	13	words "open a dialogue".
14	know how it arrived in Port Harcourt but that is where	14	But on 4 September you see that that is what they
15	the stamp was received.	15	are doing. They haven't gone for the other option.
16	Then if we go to tab 580 latterly at last, and that	16	They haven't demanded money. They haven't decided to
17	is an internal Eni/NAE email in fact it's an internal	17	demand money. They've decided to open a dialogue.
18	NAE email, in terms of the people who are on it, as far	18	MR LEW: The notice of dispute, what did that ask for?
19	as I understand, and we turn to the English translation	19	MR WADE: Sorry?
20	on page 388, and Mr Giannini is updating Mr Pagano on	20	MR LEW: What did the notice of dispute ask for?
21	the developments with regard to the dispute notice.	21	MR WADE: The notice of dispute did two things, and I am
22	He says in the first paragraphs:	22	looking at it conveniently. It is at tab 579 on
23	"We have received this. We need to investigate	23	page 335, but it did two things. It identified
24	what's happening."	24	a particular item which should not have been claimed as
25	Sorry:	25	an adjustment, and it said: as a result, your notice
	Page 149		Page 151
1	"We have received this."	1	can't be final. So your final adjustment notice can't
2	And he gives the background in the first paragraphs,	2	be final because it has an incorrect entry in it. It
3	and it is the final two paragraphs from which I draw my	3	says: in any event we can't address this within the
4	conclusions in a minute.	4	time, we don't know if it is right or wrong, and our
5	He says:	5	interpretation of that letter is that we, therefore,
6	"We are verifying with legal if the response from	6	challenge it because we need more time to evaluate the
7	Allied was sent and delivered in the time defined by the	7	claims that you are making.
8	SPA."	8	So it concludes with a request for a meeting. But
9	He says:	9	you will recall, and this is important, in my
10	"If so or in which case [after the brackets] we will	10	submission, that once they had discovered the dispute
11	open a dialogue with Allied. If it is not [he continues	11	notice NAE only intended to comply with that request for
12	in the next paragraph] otherwise it our intention to	12	a meeting if the dispute notice was received in time,
13	apply the SPA requiring the payment of the first	13	according to their investigation, and then they did.
14	tranche."	14	So
15	So an internal investigation is launched by NAE/Eni.	15	LORD HOFFMANN: Anyway, that's the evidence that shows you
16	There is a bit of a gap in the documents and	16	were right?
17	I understand that they were identified to us in the	17	MR WADE: Yes, that is the evidence that shows we were
18	disclosure process, but they are privileged so we don't	18	right. It raises questions which are, I suppose, not
19	have them, and that is not something we complain about.	19	for me to answer but it does raise questions about the
20	But if you go to the next tab, at tab 581, we see	20	basis of the finding previously made about the good
21	another update from Mr Giannini to Mr Caropreso and	21	faith nature of the claim made under the adjustments
22	others, including Mr Pagano, and the subject is "Dispute	22	guarantee. Whether that would have had any difference,
23	period with respect to the final adjustment statement	23	I don't know if it would, in terms of your award, but it
24	under the SPA". You have the conclusion of the	24	is nevertheless an important question to think about as
25	investigation.	25	you consider the evidence that you hear in this hearing.
	Page 150		Page 152
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11 II September - 12 THE CHAIRMAN: That's the next letter in the series. 13 MR WADE: The next letter is when NAE does actually invite 14 Allied to hold a hearing on the 19th, and there are 15 expressions of willingness to meet and resolve the 16 issue. We rely on that - initially we reled on that 16 if own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively, if that is not 19 own investigation and, alternatively if that is not 19 own investigation and, alternatively if that is not 19 own investigation and, alternative and investigation and investigation and adversary investigation and inves	•			13 Julie 2010
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	22	This is an area on which I should say the experts	22	amount that was properly claimed is 28.1 million. But
25 agree 1000 on, armough they don't compressing abagines.	23	agree less on, although they don't completely disagree.	23	he is only able to reach that conclusion on the basis of
24 They agree on many issues, but the questions they don't 24 evidence provided after the close of submissions by			24	
25 agree upon I will highlight in a minute. 25 NAE's expert witness.	25		25	NAE's expert witness.
7 454		D 47.4		D 474
Page 154 Page 156		Page 154		Page 156

That brings me to the end of my pre-hearing submissions, subject to any questions or comments that you have. If III CHARMAN. Thanks you wery much. That's very helpful from both sides. Now, it is 4.25 pm. We have on the schedule one with the management of the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle, is that your signature at the end of the document, page 59 in the boundle is shall you with the boundle is the boundle, is that your signature at the end of the document, page 59 in the boundle is shall you with your signature at the end of the document, page 59 in the boundle is shall you with the boundle is that your signature at the end of the document, page 59 in the boundle is shall you with the boundle is that your signature at the end of the document, page 59 in the boundle is that your signature at the end of the document, page 59 in the boundle is that your signature at the end of the document, page 59 in the boundle is that your signature at the end of the document, page 59 in the boundle is that your signature at the end of the document, page 59 in the boundle is that your signature at the end of the document with some pages 10 in the boundle on a defendent on the boundle of interests the boundle of interests the page 11 in the boundle of the Management on the boundle of your winners in the page 11 in the boundle of the winners in the page 12 in the page 12 in the page 13 in the page 14 in the page 15 in the page 14 in the page 14 in the page 14 in the page 14 i				
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12 purity would have two hours each for opening. I think 13 I've got a little bit of time left. I haven't 14 calculated it. 15 Yes, and I think Mr Wade said that he though that 16 we might be longer in reply than in opening, as 17 I'recail, but I don't think it ishould come as a surprise 18 but I am obviously in the Tribunal's hands. (Pause). 18 THE CHAIRMAN: No, You will have a chance in due course to 19 reply, but it may be in writing, so there will be no 20 reply, but it may be in writing, so there will be no 21 further submissions at this point. 22 Shall we have a Is-nimute break and then we can 23 start with our first witness? 24 MR NESBITT: That will be Mr Cerrito. 25 THE CHAIRMAN: Very well. 26 (A 38 pm) 27 Page 157 1 (4.24 pm) 28 (A 38 pm) 29 (A short break) 30 (4.38 pm) 40 MR GIUSEPPE CERRITO (called) 51 THE CHAIRMAN: Good afternoon. Could you state your name 61 for the record, please. 62 A. Yes, I am Giuseppe Cerrito. 83 THE CHAIRMAN: Very good. And you've provided a witness 94 statement in these proceedings. 95 A. Yes, I am Giuseppe Cerrito. 18 THE CHAIRMAN: And you understand that it is your obligation to tell the truth? 19 A. Ves, I understand. 19 THE CHAIRMAN: And you understand that it is your obligation to tell the truth? 10 A. Ves, I understand. 10 A. Ves, I understand. 11 THE CHAIRMAN: And you understand that it is your obligation to tell the truth? 11 THE CHAIRMAN: And that the failure to intentionally to tell the truth? 11 THE CHAIRMAN: And that the failure to intentionally to tell the truth? 11 THE CHAIRMAN: And that the failure to intentionally to tell the truth? 11 THE CHAIRMAN: And that the failure to intentionally to tell the truth? 12 Good afternoon, Mr Cernic Could Mr Cernito be given bundle DI, please. 16 Q. I understand that NAOC is Eni's and correct? 17 A. Ves, I brecame a director of NAE. 18 A. Ves, I brecame a director of NAE. 19 A. Ves, I brecame a director of NAE. 20 A. Or A dat it the same time you remained a director of NAE. 21 Good afternoon, Mr Cernico. Could Mr Cernito be				
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1	A. Yes.	1	Q. And so you pre-empted my next question, thank you very
2	Q. Okay. Can I ask you, please, to look at that side	2	much. My next question which you have just answered, is
3	letter. It's in folder G12 at tab 291. It starts at	3	it correct that the AFE was approved at the amount you
4	page 18. You can see at the top there is a heading	4	have just stated? I think it is 50.963
5	"Side letter to the PSC on OML 120 and 121 regarding	5	A. I think so.
6	Oyo-5 well intervention". Can you see that?	6	Q and that's referred to in paragraph 26 of your
7	A. Yes.	7	statement, isn't it?
8	Q. Can you please turn to the final page of that document,	8	A. Yes.
9	which is at 21. You see that there is a signature block	9	Q. And is it correct that there is no further AFE? There
10	there which is signed and dated on 1 October well,	10	was no additional AFE after that?
11	between 1 and 4 October 2012 2010, I'm sorry. 2010.	11	A. Yes
12	A. Yes.	12	Q. That was
13		13	A this is correct.
	Q. And just briefly, is the signature on the top right	14	
14	left-hand side, so the top left-hand side under NAE, is		Q the final one?
15	that the signature of Mr Pagano?	15	A. There was no possibility to have a new AFE.
16	A. Yes, that's correct.	16	Q. Okay. So now can I please ask you to turn to bundle
17	Q. And was Mr Pagano at that time, was he the directing	17	it's a new bundle to me, E3, at tab 4. (Pause).
18	manager or the general manager of	18	That is the joint statement between Mr Nicholas Good
19	A. Managing director and vice-president of the company.	19	and Mr Mark Taylor, both of whom are the quantum experts
20	Q. Of NAE? Okay.	20	in this arbitration.
21	Can you please turn to the second page of this	21	Do you see that?
22	document at paragraph 2. In that paragraph you see that	22	A. Yes.
23	Allied agreed to pay for the Oyo GSO if you don't	23	Q. You do. Can I ask you, please (Pause).
24	mind I will just call it the GSO.	24	Could I ask you, please, to turn to page 101 in that
25	A. Yes.	25	tab. 101. Turn to paragraph 5.2.
	Page 161		Page 163
			<u> </u>
1	Q. That's correct, Allied agrees to pay?	1	A. 5.2?
2	Can you please also look at paragraph 4, and can	2	Q. Yes.
3	you I won't ask you to read it to the Tribunal unless	3	A. Yes.
4	the Tribunal wants it read. I find that generally	4	Q. And the entry there is "Oyo-5 GSO costs".
5	THE CHAIRMAN: No.	5	Can you see in the third column or the column to the
6	MR WADE: But you see there that is it correct that if	6	right
7	there was an expenditure in excess of 10 per cent of the	7	A. Yes.
8	AFE, then any expenditure in excess of that had to be	8	Q can you see it says:
9	approved by Macom? Is that correct?	9	"The experts agree that the B1 documentation
10	A. Yes, in excess of 10 per cent of the approved	10	referred to by Mr Taylor"
11	authorisation of our expenditure.	11	We'll go there in a second:
12	Q. And if it was not approved by Macom, then Allied would	12	" records an expenditure by Allied"
13	not have to pay the excess, would it?	13	It doesn't say that, let me read you what it says:
14	A. Well, it is not written in this way because it is	14	"The experts agree that the B1 documentation
15	written:	15	referenced by Mr Taylor and Allied's schedule detail of
16	"The costs overrun shall be presented to Macom for	16	GSO costs exhibit MPJT18 records expenditure of
17	approval and if approved the financing of such costs of	17	44.5 million between April 2011 and March 2013 and notes
18	overrun shall be the sole responsibility of Allied in	18	that the partial invoice supported received [and there
19	accordance with the payment obligation."	19	is a reference there] ties to amounts included in
20	If it was not approved, well, it is not written	20	Allied's schedule of GSO costs."
21	which are the consequences.	21	Do you see that?
22	Q. I understand. Thank you. We've read the provision	22	A. Yes, I saw that.
23	and	23	Q. Good. In the paragraph below that, there is a reference
24	A. However, just for clarification, the AFE was approved	24	to a different document:
25	for \$50.9 million.	25	"The experts also note that the schedule of Oyo-5
23	ivi qəv.7 illilivii.	23	The experts also hote that the senedule of Oyo-3
	Page 162		Page 164
			- "0" - " .

GSO costs prepared by NAE shows 43.1 million paid by Alfield and its affiliates which is 1.4 million lower (scheet QsO GsO) workook exhibited at Mar 197124," Do you see that? Do you see that? Do you see that? Then there is a reference to the fact that the difference is prebably due to the fact that the NAE decument was produced earlier. A. Well, we draft the — Q. Crire L. So the reference explains there the difference between the two schedules, correct? That one produced carlier than the other? A. Despire that a payment until June 2012. Q. Corret. So the reference explains there the difference between the two schedules, correct? Hat one produced carlier than the other? A. Corret. Q. So you agree that Allied paid — of the GSO costs Allied paid 544.5 million towards the GSO costs? Do you agree the dual of the growth of the cost of the cost distinct of the paid 544.5 million towards the GSO costs? Do you agree the evidence for 43 million. The additional L.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for 343 million. The additional L.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for 343 million. The additional L.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for 343 million. Q. That's what — Page 165 A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4. A. L. —well, I and no have direct evidence of the additional L.4				
3	1	GSO costs prepared by NAE shows 43.1 million paid by	1	A. Yes, 59,697,438.2 (sic).
4 cschange we made between us and Allied we arrived at 56 point something. In the range of 56 million. 5 Then there is a reference to the fact that the NAE difference is probably due to the fact that the NAE document was produced earlier. 6 A. Well, we draft the— 9 Q. Tra just asking— 9 Q. Tra just asking— 10 A.— the payment until June 2012. 11 Q. Correct. So the reference explains there the difference earlier than the other? 12 between the two schedules, correct? That one produced earlier than the other? 13 A. Correct. 14 A. Correct. 15 Q. So you agree that Allied paid — of the GSO costs Allied paid \$4.5 million. two agree that Allied paid — of the GSO costs Allied paid \$4.5 million. two agree that Allied paid and recovered. 16 paid \$4.4.5 million. two agree that there experts was able to get the evidence. We received the experts was able to get the evidence. We received the evidence until June 2012 of the evidence. We received the evidence until June 2012 of the evidence. We received the evidence until June 2012 of the vidence for 43. 16 A. Well, I have — I had evidence for 43. 17 A. Which Allied paid and recovered. 18 A. Well, I have be a large the figure of 44.5 of which you're not aware? 19 Page 165 10 A. I — well, I do not have direct evidence of the additional 1.4. 21 Q. — was have been abreadown of the GSO costs. 22 A. Yes. 23 Q. Yes. 24 A. I have the evidence for 43. 35 Q. Can Task you, please, then, to go to folder F20—5 sorry, F19 is — bards the cone he agrees. 36 A. I may the evidence for 43. 37 D. Yes. 38 A. I have the evidence for 43. 39 Q. Yes. 40 Lord POFFMANN: You did say 197. 41 A. I have the evidence for 43. 41 LORD HOFFMANN: You did say 197. 42 Please don't worry, Irm not going to sak you to agree the amounts here. 43 A. Yes. 44 Correct. 45 A. Yes. 46 A. Well, I — a many agree the amount of the face table were supported by final interpretation of the face table were supported by final interpretation of the face table were supported by final interpretation of the face table the cost inclu	2	Allied and its affiliates which is 1.4 million lower	2	Q. Do you understand that to be the total cost of the GSO?
Then there is a reference to the fact that the NAE of decument was produced earlier. A. Well, we draft the — Sample shade of the GSO costs of the payment until June 2012. between the two schedules; correct? That one produced earlier than the other? A. — the payment until June 2012. between the two schedules; correct? That one produced earlier than the other? A. — the payment until June 2012. between the two schedules; correct? That one produced earlier than the other? A. — the payment until June 2012. between the two schedules; correct? That one produced earlier than the other? A. — the payment until June 2012. between the two schedules; correct? That one produced earlier than the other? A. Well, Sample shade of the GSO costs Allied paid — of the GSO costs Allied paid — of the GSO costs Po you agree that Allied paid and earlier than the other? A. Well, I have — I had evidence for 43 million. The additional I.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for S3 million. A. Which Allied paid and recovered. A. Q. — what you agree. And you do not agree the figure of 44.5 of which you gree. And you do not agree the figure of 44.5 of which you grees. And you do not agree the figure of 44.5 of which you grees. And you do not agree the figure of 44.5 of which you grees. And you do not agree the figure of 50 million. A. I — well, I do not have direct evidence of the additional I.4. A. I — well, I do not have direct evidence of the additional I.4. A. I have the evidence for 43. Q. Yes. A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to final series that the final invoice, in the sense that at that time there were still a discussion and a negotiation with contractors to final series the contractors. The paid of 43.08 million, which is the amount paid by Allied. A. I have the evidence for 43. C.	3	(sheet 4 Oyo-5 GSO) workbook exhibited at MPJT24."	3	A. Well, I do not have this evidence because in the last
decument was produced earlier. A. Well, we draft the — 9	4	Do you see that?	4	exchange we made between us and Allied we arrived at 56
7 A. Then in all that there were invoices not approved by 8 A. Well, we draft the — 9 Q. I'm just asking — 10 A. — the payment until June 2012. 11 Q. Correct. So the reference explains there the difference 12 between the two schedules; correct? That one produced 13 earlier than the other? 14 A. Correct. 15 Q. So you agree that Allied paid — of the GSO costs Allied 16 paid \$44\$ smillion towards the GSO costs? Do you agree 17 that? 18 A. Well, have — I had evidence for 43 million. The 19 additional 1.4 I believed the experts was able to get 10 the evidence. We received the evidence until June 2012. 21 for \$43\$ million. 22 Q. Thar's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 25 44.5 of which you're not aware? 26 A. I have the evidence of the 27 additional 1.4. 28 A. I have the evidence of the 29 additional 1.4. 20 Q. Thar's what — 21 A. I well, I do not have direct evidence of the 22 additional 1.4. 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 25 44.5 of which you're not aware? 26 A. I have the evidence for 43. 27 A. I have the evidence for 43. 28 A. I have the evidence of the 29 additional 1.4. 20 Q. Thar's what — 21 A. I well, I do not have direct evidence of the 22 additional 1.4. 23 A. Which Allied paid and recovered. 24 A. I have the evidence for 43. 25 Q. Can I ask you, please, then, to go to folder F20 — 26 sorry, F19 is — that is the one he agrees. 27 A. I have the evidence for 43. 28 A. I have the evidence for 43. 29 Q. and was referred to in the table you just fooked at in 20 the province of the properate by 21 claimants' counsel, this document is eshibit MPJT, 22 Please don't worry, I'm not going to ask you to 23 agree he amounts here: 24 A. Yes. 25 Q. I will ask you, please, tho, bo, the II have prepared by 26 claimants' counsel, this document is eshibit MPJT, 27 A. Well, was and the table you agree that the total is 28 agree he amounts he	5	Then there is a reference to the fact that the	5	point something. In the range of 56 million.
8 A. Well, we draft the — 9 Q. Fm just asking — 10 A. — the payment until June 2012. 11 Q. Correct. So the reference explains there the difference between the two schedules, correct? That one produced earlier than the other? 13 earlier than the other? 14 A. Correct. 15 Q. So you agree that Allied paid — of the CSO costs Allied paid 54.45 million towards the GSO cost? Do you agree the paid 54.45 million towards the GSO cost? Do you agree the two schedules, but I fyou book on the first page, 110, you see that there is the final algostment statement. That is the title there. 16 A. Well, I have — I had evidence for 43 million. The additional I.4.1 believed the evidence until June 2012 the evidence. We received the evidence until June 2012 the evidence. We received the evidence until June 2012 the vidence. We received the evidence until June 2012 the A. Will, Allied paid and recovered. 20 Q. India what — 21 A. Which Allied paid and recovered. 22 Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? Page 165 1 A. I — well, I do not have direct evidence of the additional I.4. 2 A. I have the evidence for 43. 3 Q. Yes. 3 Q. Can I ask you, please, then, to go to folder F20 — 3 surry, F19 is — that's the one he agrees. 4 A. I have the evidence for 43. 4 A. I have the evidence for 43. 4 A. I have the verified to the final page of the the evidence with the proposition of the final page of the principle of the proposition of the final page of the principle of the principl	6	difference is probably due to the fact that the NAE	6	Q. Okay
9 Q. I'm just asking — 10 Q. Correct. So the reference explains there the difference between the two schedules; correct? That one produced correct from the other? 11 So I'm not able to say which is the final amount. 12 Deven the two schedules; correct? That one produced correct from the other? 13 carlier than the other? 14 A. Correct. 15 Q. So you agree that Allied paid — of the GSO costs Allied paid S45, million towards the GSO costs? Do you agree that? 16 A. Well, I have — I had evidence for 43 million. The additional 1.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for 543 million. 22 Q. That's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? 25 Page 165 26 Q. Can I ask you, please, then, to go to folder F20 — story, F10 is — that's the one he agrees. 27 Can you open, please, F10 at tab 18. This document is is—which you car goes, then, to go to folder F20 — story, F10 is—that's the one he agrees. 28 Q. Can I ask you, please, then, to go to folder F20 — story, F10 is—that's the one he agrees. 29 Q. That's what — 2 Q. It's a bit higher than you said, it is 57. 30 Q. Yes. 31 A. Well, I — 2 Q. It's a bit higher than you said, it is 57. 31 A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 31 Q. Yes. 32 Q. It's a bit higher than you said, it is 57. 33 A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 32 Q. Yes. 33 Q. Yes. 44. So Please don't worry, I'm not going to ask you to turn to the final page of the that the most page and the same page and the same page and the page and the same page and the same page and the same page	7	document was produced earlier.	7	A. Then in all that there were invoices not approved by
10 A. — the payment until June 2012. 10 reduce the amount of the invoices, like Schlumberger. 11 So I'm not able to say which is the final amount. 12 Detween the two schedules; correct? That one produced 12 Detween the two schedules; correct? That one produced 12 Detween the two schedules; correct? That one produced 12 Detween the two schedules; correct? That one produced 12 Detween the two schedules; correct? That one produced 13 tab 24. That is the other document we looked at before in the folial paid of the GSO costs Allied 14 tab 24. That is the other document we looked at before in the joint expert profit. This is easier to identify 20 and it might be easier for you in particular, but if you look on the first page, 110, you see that there is the final amount of the control of the contro	8	A. Well, we draft the	8	Allied. There were negotiation ongoing with some
between the two schedules; correct? That one produced earlier than the other? 2	9	Q. I'm just asking	9	contractors which were to which Allied was trying to
between the two schedules; correct? That one produced actricr than the other? A. Correct. S. Q. So you agree that Allied paid — of the GSO costs Allied by paid \$44.5 million towards the GSO costs? Do you agree that? A. Well, I have — I had evidence for 43 million. The additional I.41 believed the experts was able to get the evidence. We received the evidence until June 2012 for \$43 million. A. Which Allied paid and recovered. A. I — well, I do not have direct evidence of the additional I.4.1 believed the experts was able to get the evidence for 43. A. I — well, I do not have direct evidence of the additional I.4.1 believed the experts was able to get additional I.4.1 believed the experts was able to get the evidence of the safe that was a series of the safe that was referred to in the table you just looked at in the joint statement. That is the title there. A. I — well, I have the evidence of the additional I.4. bell of the series was a series of the safe that was referred to in the table you just looked at in the joint statement at paragraph 5.2. Please don't worry, I'm not going to ask you to agree the amounts here. DORD HOFFMANN: You did say 19? MR WADE: I am going to ask you to turn to the final page of the that printout of a spreadsheet. A. Yes. Q. Page 278. A. Yes. Q. I was a state that that the there were still a discussion and a negotiation with contractors to finalise the cost. That is the title there: A. We were there a breakdown of the GSO costs. A. Was a bit higher than you said, it is 57. Q. It is a bit higher than you said, it is 57. Q. It is a bit higher than you said, it i	10	A the payment until June 2012.	10	reduce the amount of the invoices, like Schlumberger.
13 cartier than the other? 14 A. Correct. 15 Q. So you agree that Allied paid — of the GSO costs? Do you agree that Allied paid 544.5 million towards the GSO costs? Do you agree that? 17 thank 18 A. Well, I have — I had evidence for 43 million. The additional 1.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 21 for \$43 million. 22 Q. That's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? 25 44.5 of which you're not aware? 26 47 Page 165 27 Page 165 28 A. I — well, I do not have direct evidence of the additional 1.4. 29 Q. and lask you, please, then, to go to folder F20 — sorry, F19 is — that's home he agrees. 20 Can Joax poun open, please, F19 at tab 18. This document is is—which you can glean from the index prepared by claimant's counset, list document is which was referred to in the table you just looked at in the joint statement at paragraph 5.2. 29 Pease don't worry, I'm not going to ask you to agree the amounts here. 30 Q. Page 278. 31 A. West. 32 Q. Page 278. 33 A. West. 34 A. I have the evidence for 43. 44 A. I have the evidence for 45. 54 A. I have the evidence of the sorry, F19 is—that's list owned the evidence of the sorry, F19 is—that's list owned the index prepared by claimant's counset, list document is exhibit MPJT. 34 MR WADE: It is rigoling to ask you to turn to the final page of that a printout of a spreadsheet. 35 A. Yes. 36 A. West. 37 Can you open, please, F19 at tab 18. This document is exhibit MPJT. 38 A. We were providing a table like these frequently. We tried to reconcile both positions. 49 C. Page 278. 40 C. Page 278. 41 A. Yes. 41 CORD HOFFMANN: You did say 19? 42 A. Yes. 43 A. We were providing a table like these frequently. We tried to reconcile both positions. 44 A. Yes. 45 Can Just a division of the level of the GSO at \$50,903,912, and that's correct. And if we add 10 per cent to that, would you agree that the total is just over 56 millition? 45	11	Q. Correct. So the reference explains there the difference	11	So I'm not able to say which is the final amount.
14 A. Correct. 15 Q. So you agree that Allied paid — of the GSO costs Allied 16 paid \$44.5 million towards the GSO costs? Do you agree 17 that? 18 A. Well, I have — I had evidence for 43 million. 19 additional I.4 I believed the experts was able to get 20 the evidence. We received the evidence until June 2012 21 for \$43 million. 22 Q. That's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 25 44.5 of which you're not aware? 26 44.5 of which you're not aware? 27 Page 165 28 Page 165 29 Q. Yes. 30 Q. Yes. 30 Q. Yes. 31 A. Thav's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 30 Q. Isc. 31 A. Wew reproviding a table like these frequently. We tried to reconcile both positions. 32 Q. I suck as you, please, to look at column 9, 9 starting 33 days you, please, to look at column 9, 9 starting 34 A. Yes. 34 Q. — what you agree that the fall you got bogge 114 — 35 Q. Yes. 36 A. I have there a breakdown of the GSO costs. 37 A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 38 Q. I see. 39 Q. Page 278. 30 Q. Page 278. 31 A. Yes. 31 Q. and was add it's the lower amount, the amount paid of 43.08 million, which is the amount paid by Allied — 31 A. Yes. 32 Q. I will ask you, please, to look at column 9, 9 starting 34 invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 39 Q. Page 278. 30 Q. Page 278. 31 A. Yes. 31 Q. and unring back to the question of the level of the GSO at \$50,963,912, and that's correct. And if we add 40 Q. and turning back to the question of the level of the GSO at \$50,963,912, and that's correct. However — 40 Q. Page 278. 41 A.	12	between the two schedules; correct? That one produced	12	Q. So can I ask you, please, to turn to folder F20 at
15 Q. So you agree that Allied paid — of the GSO costs Allied paid \$44.5 million towards the GSO costs? Do you agree that Allied paid \$44.5 million towards the GSO costs? Do you agree that? 18 A. Well, I have — I had evidence for 43 million. The additional 1.4 I believed the experts was able to get the vicience. We received the evidence until June 2012 20 the evidence. We received the evidence until June 2012 21 for \$43 million. 22 Q. That's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? 25 A. For well, I do not have direct evidence of the additional 1.4. 26 Q. Can I ask you, please, then, to go to folder F20 — sorry, Fly is — that's the one he agrees. 4 A. I have the evidence for 43. 5 Q. Can I ask you, please, then, to go to folder F20 — sorry, Fly is — that's the one he agrees. 6 Can you open, please, Fly at tab 18. This document is sin-which you can glean from the index prepared by claimant's counsed, this document is exhibit MPJT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. 10 Please don't worry, Tim not going to ask you to agree the amounts here. 11 LORD HOFFMANN: You did say 19? 12 MR WADE: It is Fly, tab 18. Sorry. 13 MR WADE: It is Fly, tab 18. Sorry. 14 A. Yes. 15 A. Yes. 16 LORD HOFFMANN: Oh, tab 18. Sorry. 17 MR WADE: It is going to ask you to turn to the final page of that printout of a spreadsheet. 18 A. Yes. 29 Q. Page 278. 20 Q. Page 278. 20 I will ask you, please, to look at column 9, 9 starting from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice amount endorsed". Can you please read out the total of the final invoice endorsed there? 21 A. Yes. 22 Q. I will ask you, please, to look at column 9, 9 starting from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice endorsed ther	13	earlier than the other?	13	tab 24. That is the other document we looked at before
16	14	A. Correct.	14	in the joint expert report. This is easier to identify
that? 17	15	Q. So you agree that Allied paid of the GSO costs Allied	15	and it might be easier for you in particular, but if you
18 A. Well, I have — I had evidence for 43 million. The additional I.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 for \$43 million. 22 Q. That's what — 23 A. Which Allied paid and recovered. 24 Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? 25 Page 165 1 A. I — well, I do not have direct evidence of the additional I.4. 2 Q. Can I ask you, please, then, to go to folder F20 — sorry, F19 is — that's the one he agrees. 25 Can you open, please, F19 at tab 18. This document is — which you can glean from the index prepared by claimants' counsel, this document is — which you can glean from the index prepared by LORD HOFFMANN: Oh, tab 18. Sorry. 26 MR WADD: It is F19, tab 18. LORD HOFFMANN: You did say 19? 27 A. Yes. 28 A. Yes. 29 Q. Page 278. 20 Q. and if you go to page 114 — 20 A. Yes. 21 Q. — we have there a breakdown of the GSO costs. 21 A. Yes. 22 Q. — we have there a breakdown of the GSO costs. 22 Q. — we have there a breakdown of the GSO costs. 29 Q. — we have there a breakdown of the GSO costs. 20 A. Yes. 21 Q. — we have there a breakdown of the GSO costs. 21 A. Yes. 22 Q. I will add recovered. 23 Q. — we have there a breakdown of the GSO costs. 24 A. Yes. 25 A. Ves. 26 Q. I will add recovered. 27 Can Vou open, I dease, F19 at the figure of the index prepared by claimants' counsel, this document is exhibit MPDT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. 29 Please don't worry, I'm not going to ask you to a gree the amounts here. 30 Q. Page 278. 31 A. Yes. 32 Q. — we have there a breakdown of the GSO costs. 32 A. Yes. 33 A. That's correct. 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 39 Q. I well as were providing a table like these frequently. We tried to reconcile both positions. 30 Q. I understand. T	16	paid \$44.5 million towards the GSO costs? Do you agree	16	look on the first page, 110, you see that there is the
19 additional 1.4 I believed the experts was able to get the evidence. We received the evidence until June 2012 21 for \$43 million. 22 Q. That's what	17	that?	17	final adjustment statement. That is the title there.
the evidence. We received the evidence until June 2012 for \$43 million. Q. That's what	18	A. Well, I have I had evidence for 43 million. The	18	A. Yes.
21	19	additional 1.4 I believed the experts was able to get	19	Q. And if you go to page 114
22 Q. That's what 23 A. Which Allied paid and recovered. 24 Q what you agree. And you do not agree the figure of 25 44.5 of which you're not aware? Page 165 Page 165 Page 167 1 A. I well, I do not have direct evidence of the 2 additional 1.4. 2 Q. It's a bit higher than you said, it is 57. 3 Q. Yes. A. I have the evidence for 43. 4 A. I have the evidence for 43. 5 Q. Can I ask you, please, then, to go to folder F20 5 sorry, F19 is that's the one he agrees. Can you open, please, F19 at tab 18. This document is 8 is which you can glean from the index prepared by claimants' counsel, this document is exhibit MPT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. 1 Please don't worry, I'm not going to ask you to agree the amounts here. 1 LORD HOFFMANN: You did say 19? 1 MR WADE: It is F19, tab 18. 1 LORD HOFFMANN: Oh, tab 18. Sorry. 1 MR WADE: It is F19, tab 18. 1 LORD HOFFMANN: Oh, tab 18. Sorry. 1 MR WADE: It is F19, tab 18. 2 Q. Page 278. 3 A. Yes. 2 Q. I will ask you, please, to look at column 9, 9 starting from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice endorsed there? 2 A. Yes, tat's correct. However 2 Q. And	20	the evidence. We received the evidence until June 2012	20	A. Yes.
A. Which Allied paid and recovered. Q. — what you agree. And you do not agree the figure of 44.5 of which you're not aware? Page 165 Page 167 A. I — well, I do not have direct evidence of the additional 1.4. Q. Yes. A. I have the evidence for 43. Q. Can I ask you, please, then, to go to folder F20 — sorry, F19 is — that's the one he agrees. Can you open, please, F19 at tab 18. This document is e-which you can glean from the index prepared by claimants' counsel, this document is exhibit MPJT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. Please don't worry, I'm not going to ask you to agree the amounts here. DORD HOFFMANN: You did say 19? MR WADE: I ris F19, tab 18. LORD HOFFMANN: Oh, tab 18. Sorry. MR WADE: I am going to ask you to turn to the final page of that printout of a spreadsheet. A. Yes. Q. Page 278. A. Yes. Q. Page 278. A. Yes. Q. Page 278. A. Yes. Q. I will ask you, please, to look at column 9, 9 starting from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice endorsed there? 23 Q. I sthat correct? If you look at the total amount you were just mentioning, int it? 24 dollars, that is an amount you were just mentioning, int it? Page 167 A. Well, I — 2 Q. Is sa bit higher than you said, it is 57. A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices, in the sense that at that time there were still adiscussion and a negotiation with contractors to finalise the cost. 9 Q. I see. 9 A. We were providing a table like these frequently. We tried to reconcile both positions. 10 Q. I understand. Thank you. 11 So here you have also the lower amount, the amount paid by Allied — 12 A. Yes. 13 A. Correct. 14 A. Well, I — 2 Q. And turning back to the question of the level of the FAE, we said that the FAE was approved costs of the GSO at \$50,963,912, and that's correct. And if we add 12 De precent to that, you'dly ou	21	for \$43 million.	21	Q we have there a breakdown of the GSO costs.
24 Q what you agree. And you do not agree the figure of 25 44.5 of which you're not aware? Page 165 Page 167 1 A. I well, I do not have direct evidence of the 2 additional 1.4. 2 Q. It's a bit higher than you said, it is 57. 3 Q. Yes. 3 A. Thave the evidence for 43. 4 Can you open, please, then, to go to folder F20 5 sorry, F19 is that's the one he agrees. 6 Can you open, please, F19 at tab 18. This document is which you can glean from the index prepared by 9 claimants' counsel, this document is exhibit MPJT, 10 which was referred to in the table you just looked at in 11 the joint statement at paragraph 5.2. 12 Please don't worry, I'm not going to ask you to 13 agree the amounts here. 14 LORD HOFFMANN: You did say 19? 15 MR WADE: It is F19, tab 18. 16 LORD HOFFMANN: Oh, tab 18. Sorry. 17 MR WADE: It is F19, tab 18. 18 LORD HOFFMANN: Oh, tab 18. Sorry. 19 A. Yes. 20 Q. Page 278. 21 A. Yes. 22 Q. I will ask you, please, to look at column 9, 9 starting 23 from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice endorsed there? 24 dollars, that is an amount you were just mentioning, the the approximation you were just mentioning, the the approximation you were just mentioning, the the approximation you were just mentioning, the approximation you were just mentioning, the the approximation you were just mentioning, the the approximation you were just mentioning, the chap round the page 167 A. Well, I 2 Q. It's a bit higher than you said, it is 57. A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoices in the sense that at that time there were sorry, F19 is 4 his decided in these table were supported by final invoices in the sense that at that time there were sincluded in these table were supported by final invoices in the sense that at that time there were sincluded in these table were supported by final invoices in the sense that at that time there were sinc	22	Q. That's what	22	A. Yes.
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Page 165 A. I – well, I do not have direct evidence of the additional 1.4. Q. Yes. A. I have the evidence for 43. Q. Yes. A. I have the evidence for 43. Q. Can I ask you, please, then, to go to folder F20 – sorry, F19 is – that's the one he agrees. Can you open, please, F19 at tab 18. This document is is – which you can glean from the index prepared by claimants' counsel, this document is exhibit MPJT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. Please don't worry, I'm not going to ask you to agree the amounts here. LORD HOFFMANN: You did say 19? MR WADE: It is F19, tab 18. LORD HOFFMANN: Oh, tab 18. Sorry. MR WADE: I am going to ask you to turn to the final page of that printout of a spreadsheet. MR WADE: I am going to ask you to turn to the final page of that printout of a spreadsheet. A. Yes. Q. Page 278. A. Well, I. — Q. It's a bit higher than you said, it is 57. A. That's correct, 57. I'm not sure that all the costs included in these table were supported by final invoice, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. Q. Is see. Q. I see. A. We were providing a table like these frequently. We tried to reconcile both positions. U. J. Understand. Thank you. So here you have also the lower amount, the amount paid by Allied — A. Yes. A. Yes. Q. Page 278. A. Yes. Q. And turning back to the question of the level of the FAE, we said that the FAE was approved costs of the GSO at \$50,963,912, and that's correct. And if we add 10 per cent to that, would you agree that the total is just over 56 million? A. Yes, that's correct. However — 25 Q. And —	24	Q what you agree. And you do not agree the figure of	24	dollars, that is an amount you were just mentioning
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Q. Can I ask you, please, then, to go to folder F20 sorry, F19 is that's the one he agrees. Can you open, please, F19 at tab 18. This document is which you can glean from the index prepared by claimants' counsel., this document is exhibit MPJT, which was referred to in the table you just looked at in the joint statement at paragraph 5.2. Please don't worry, I'm not going to ask you to agree the amounts here. LORD HOFFMANN: You did say 19? MR WADE: It is F19, tab 18. LORD HOFFMANN: Oh, tab 18. Sorry. MR WADE: I am going to ask you to turn to the final page of that printout of a spreadsheet. A. Yes. Q. Page 278. A. Yes. Q. I will ask you, please, to look at column 9, 9 starting from the left and going right, under the heading "Final invoice amount endorsed". Can you please read out the total of the final invoice endorsed there? 5 invoices, in the sense that at that time there were still a discussion and a negotiation with contractors to finalise the cost. 8 Q. I see. 4. We were providing a table like these frequently. We tried to reconcile both positions. 10 Lord Tried to reconcile both positions. 11 Q. I understand. Thank you. So here you have also the lower amount, the amount paid of 43.08 million, which is the amount paid by A. Yes. A. Yes. Q and we said it's the lower amount because this is an earlier document; correct? A. Correct. Q. And turning back to the question of the level of the FAE, we said that the FAE was approved costs of the GSO at \$50,963,912, and that's correct. And if we add 10 per cent to that, would you agree that the total is just over 56 million? 24 A. Yes, that's correct. However 25 Q. And	3	Q. Yes.	3	A. That's correct, 57. I'm not sure that all the costs
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Page 166 Page 168	25	total of the final invoice endorsed there?	25	Q. And
Page 168				
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A.— this was—if I can clarify, this was one of the points, because just for your understanding, this table, so since it is including the payment of March 2012, means that this is a table prepared more than one year after the GSO was sent, and there is a clear—it was reflecting what was happening during that period that there were negotiations ongoing with the contractor. The invoices were still under discussion. The payments were not done. The contractors were claiming for the payments. And the value—final value of the GSO was not yet closed. This was an estimate prepared in—I believe in payments. And the value—final value of the GSO was not yet closed. This was an estimate prepared in—I believe in payments. And the value—final value of the GSO was not yet closed. This was an estimate stimate. O. I'm story to interrupt, and I spologise to the Tribunal for the final estimate. O. I'm story to interrupt, and I spologise to the Tribunal for the final estimate. The invoice of the final estimate. The was an estimate prepared in—I believe in move on the amount that was authorised? A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect, to cover the legal aspect, of course. A. Well, to look at the legal aspect, to cover the legal aspect,				
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25 Moving topic, then, you say in your statement that 25 decision.			1	
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Page 170	25	Moving topic, then, you say in your statement that	25	decision.
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1	Q. I understand, thank you.	1	is currently the chief executive, CEO, of Eni at the
2	A. This is the process.	2	moment.
3	Q. And when you were negotiating the SPA amendment, NAE's	3	Q. And in the cc line, the copied line, you see the people
4	primary objective, and perhaps both parties, but NAE's	4	are mentioned Mr Magnani, Mr Ranco. Is it Ms Ranco?
5	primary objective was to achieve completion, wasn't it?	5	Mr Dall'Omo, Mr Pagano, Mr Bollini. I think that's a
6	A. Yes, it was.	6	Mr, or it might be that that is a lady.
7	Q. And the reason you were so keen to achieve completion	7	Are those people in the cc line, are they board
8	was that the deal that you secured was and by "deal"	8	members of Eni's exploration and production division or
9	I mean the payment that was agreed under the SPA was	9	were they directors of some other company?
10	a vastly inflated payment for the interest that was	10	A. They were at that time in charge of various departments
11	being sold, wasn't it?	11	in the exploration and production division.
12	A. Well, I didn't understand really the	12	Q. The subject of this email is "Nigeria OML 120 and 121
13	Q. So the	13	assignment update"; is that correct?
14	A. So the payment	14	A. Yes.
15	Q payment that Allied promised to pay NAE was vastly in	15	Q. I should say perhaps, members of the Tribunal, that
16	excess vastly means by a very great deal in excess	16	I will be finished very soon. This is the last document
17	of what the interest was worth. That's correct, isn't	17	I intend to take just because of the time.
18	it?	18	THE CHAIRMAN: Thank you very much.
19	A. Well, I do not agree with this sentence, in the sense	19	MR WADE: So we're not staying all night.
20	that I believe we provided to in the sense that in	20	Can you briefly quickly read the email to
21	the documents, the value of our asset in our book was in	21	Mr Descalzi, which starts with "Claudio".
22	the range of \$240 million.	22	A. Yes:
23	Q. Can I ask you please to open G21.	23	"Below is the note shared with the competent
24	THE CHAIRMAN: Were you finished?	24	function that illustrates the final condition with
25	MR WADE: Sorry, I didn't mean I apologise if I had	25	respect to the represented to the board of directors,
	D 472		D 475
	Page 173		Page 175
1	interrupted. I thought you had reached a natural	1	the primary difference is the guarantee given for the
2	conclusion.	2	balance of the consideration. Now ultimate parent
3	A. The value of the asset in our books was \$240 million,	3	company guarantee originally bank guarantee."
4	more or less, if I remember well, but the range is in	4	Q. I'm sorry, I didn't mean you to read it out loud, if
5	this one in this way, and so the value of the asset was	5	I want you to read out loud I will ask you to. That's
6	not so far the consideration was not so far from the	6	very kind of you. But I do invite the Tribunal to read
7	value of the asset. This was the object the	7	the email, I just don't want to waste time on reading it
8	objective of our I mean, the target of our	8	out loud.
9	transaction, this value.	9	But on the penultimate line before the end of the
10	Q. Can I ask you to turn to volume G21, please, at tab 550.	10	email, it says "the first \$100 million are already
11	LORD HOFFMANN: Tab?	11	paid."
12	MR WADE: Tab 550.	12	Correct?
13	The first page of the exhibit is 107, and	13	A. Correct.
14	A. Yes.	14	Q. And the signature is now scheduled on the 28th. Is it
15	Q the English is at 109. Can I ask you, please, to	15	fair to say that this email was presenting the terms of
16	turn to page 109.	16	the agreement that had been reached in relation to the
17	A. 109.	17	assignment of the OMLs in June 2012?
18	Q. At the top of that page, can you see that the first	18	A. Well, I was not part of this email. The email was sent
19	email in this chain is an email from Mr Casula to	19	on the 26th. I suppose that this is confirming the
20	Mr Descalzi, Claudio Descalzi?	20	terms of the agreements which were analysed on the 28th.
21	A. Yes.	21	Q. So the first amendment agreement?
22	Q. Can you please explain to the Tribunal who Mr Descalzi	22	A. The first amendment
23	was at the time and who is he now?	23	Q. This is informing the directors of the terms of the
24	A. Yes. Mr Descalzi was the chief operating officer of the	24	first amendment; correct?
25	exploration and production division at that time, and he	25	A. I guess. I mean
	Page 174		Page 176
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1	Q. And can you turn to the next page, please, and although	1	A. Yes.
2	we don't have a signature, we're looking at the email	2	Q. You see that there? And that's the term that was
3	which Mr Casula was forwarding to Mr Descalzi from	3	agreed, wasn't it?
4	Mr Pagano, in which the terms are actually summarised.	4	A. Yes.
5	A. Which email is it?	5	Q. Further down, under the heading "Conclusions", there is
6	Q. So the email which you started reading out loud was the	6	a comment, bullet point 3:
7	email from Mr Casula to Mr Descalzi and he is forwarding	7	"Already with the payment at closing of the first
8	an email from Mr Pagano, isn't he?	8	tranche of the consideration"
9	A. Yes.	9	And that's a payment that had already been made:
10	Q. And the email from Mr Pagano has the same heading,	10	" Eni obtains better value compared with the
11	121 "120/121 assignment update", and the second	11	expected residual value in the event of no assignment.
12	paragraph starts:	12	It is believed that even with the new terms reported
13	"In the context of the realisation process of the	13	above, the assignment opportunity is in Eni's interest
14	Eni ENP portfolio""	14	and thus should be pursued."
15	I stop there for a second, since we're there, at	15	So my question to you is that Mr Pagano here is
16	this time Eni had decided to sell off a number of its	16	
			describing that even with a payment of \$100 million,
17	assets; is that correct? Do you know if that's correct?	17	about 40 per cent of the agreed price, Eni has already
18	Around June 2012, Eni was in a process, a general	18	made better value than keeping the asset? That's what's
19	process, of selling off exploration and production	19	he's saying here; right?
20	assets?	20	A. Well, the fact that it is a do nothing profile so
21	A. General process, I cannot say. To sell oil well 120 to	21	looking at the value based on
22	121.	22	Q. Can I first ask you, is that what he is saying here?
23	Q. Well, if you can't say, then you can't. But he says	23	A. This is what he said but it is not
24	here he explains the nature of the holdings in the	24	Q. And therefore
25	OMLs, and he goes on to say at the conclusion of the	25	THE CHAIRMAN: Just a second, if you would like to add a
	Page 177		Page 179
1	farm-out process on 29 December, NAE and Allied, I am	1	comment, please do.
2	paraphrasing, agreed a price of 250 million and he gives	2	A. If I can explain, the point that the value of the asset
3	the schedule of payments in the paragraph below.	3	is calculated only on the do nothing profile of the two
4	A. I'm sorry, I'm	4	wells was giving the value which is, of course, a low
5	Q. He lists the schedule of payments that's agreed, and	5	value of the asset. Of course, when you make
6	then at the bottom of 109 there's a list of agreed	6	an evaluation of the asset you have various scenarios.
7	comments.	7	In the case, if we were looking at the redevelopment
8	A. Yes.	8	of the asset, it is because when we evaluate an asset
9	Q. Then at the top of 110 there is a discussion about bank	9	we have usually different scenarios. If we were looking
10	guarantees or guarantees, and then in the paragraph	10	at the redevelopment of the asset with additional
11	after that, starting on 1 June	11	investment, additional intervention, it possible the
12	A. 2012.	12	value was different from the negative one represented in
13	Q "Allied notified NAE of its difficulties in	13	these in the present email, in the sense that
14	finalising the transaction under the terms described	14	THE CHAIRMAN: Just a second but I am just looking at the
	above. After further discussion, after having extended	15	email. The email says it doesn't talk about other
15		. 10	chian. The chian says it doesn't tank about onici
15 16			scenarios It talks about
16	via mutual accord the long-stop date to 28 June the	16	scenarios. It talks about
16 17	via mutual accord the long-stop date to 28 June the parties agreed as following"	16 17	A. It is
16 17 18	via mutual accord the long-stop date to 28 June the parties agreed as following" Then again there is a list of payments.	16 17 18	A. It is THE CHAIRMAN: "The first tranche of the consideration Eni
16 17 18 19	via mutual accord the long-stop date to 28 June the parties agreed as following" Then again there is a list of payments. And then there is a section sign, I don't know what	16 17 18 19	A. It is THE CHAIRMAN: "The first tranche of the consideration Eni obtains a better value compared to the expected residual
16 17 18 19 20	via mutual accord the long-stop date to 28 June the parties agreed as following" Then again there is a list of payments. And then there is a section sign, I don't know what that's called, that section sign. It says:	16 17 18 19 20	A. It is THE CHAIRMAN: "The first tranche of the consideration Eni obtains a better value compared to the expected residual value in the event of no assignment."
16 17 18 19 20 21	via mutual accord the long-stop date to 28 June the parties agreed as following" Then again there is a list of payments. And then there is a section sign, I don't know what that's called, that section sign. It says: "The adjustments related to the costs sustained by	16 17 18 19 20 21	A. It is THE CHAIRMAN: "The first tranche of the consideration Eni obtains a better value compared to the expected residual value in the event of no assignment." And I think the comment was, do you have any comment
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45 (Pages 177 to 180)

1	I know — I know that the net value of the asset at that	1	we were never asked for the additional evidence.
2	time was \$240 million. I believe that we represented	2	Q. If they had attended that meeting and you were
3	this value to our internal to Eni's board of	3	willing to provide the additional evidence?
4	directors. I needed to check what we represented to	4	A. Of course. At that time probably not all at that
5	them, but I remember that this was one of the	5	time probably not all the documents. If you are
6	information provided to the top management for	6	referring to the meeting of September 19, probably not
7	submission of the approval to the Eni board of	7	all the documents were still available in September,
8	directors. One of the information was the value in our	8	because the time to recover all the invoices, accept all
9	books was \$240 million.	9	the invoices and make the payment probably was not
10	THE CHAIRMAN: But he doesn't mention that in his email.	10	enough to have all the documents in September. But, of
11	A. No, because this is an internal email to the management.	11	course, we were providing what we had been able to get
12	It is not the what it was represented to the Eni board	12	at that time.
13	of directors. The Eni board of directors, the approval	13	Q. And if in the meeting in September the invoices showed
14	was got before that email, because we represented we	14	that you had asked for too much, would you then accept
15	presented our deal to the Eni board of directors before	15	a lower payment?
16	this email. So it was the the deal was already	16	A. If there was a clear mistake, why not?
17	approved. What he was presenting to the CEO at that	17	MR WADE: Thank you. I have no more questions.
18		18	Questions from THE TRIBUNAL
18	time was an updated situation on the negotiation but not	19	THE CHAIRMAN: Were you involved in sending the final
	the full picture of the value of the asset.	20	
20	MR WADE: Do you by any chance know why Mr Pagano is not		adjustment statement to Allied?
21	giving evidence in this arbitration?	21	A. Yes, I was.
22	A. No, no, I don't know.	22	THE CHAIRMAN: Were you involved in sending the supporting
23	Q. One final question then, please. You believe that it's	23	data to Allied?
24	correct that if that a party should only be entitled	24	A. Not directly. The supporting data that were sent in
25	to claim costs if he can prove that he's paid them.	25	July 20 sorry, in June 2012 dealt of course
	Page 181		Page 183
1	That's correct, isn't it?	1	I know, because the activity was done by Mr Caropreso
2	A. Well, this was not the intention of the parties. At the	2	which was the finance management at the time and he told
3	time we finalised the adjusted the final adjustment	3	me that he collected he took at least two weeks to
4	statement, because in June 2012 in July 2012, when we	4	collect all the available documents with his own
5	presented the final adjustment statement, there was, of	5	department, involving two or three staff of his own
6	course, no time to recover all the supporting documents	6	department. So they collect all the documents
7	of the cost included in the final adjustment statement,	7	available, they scanned copies of the invoices, and
8	because, of course, there were there were invoices	8	the and they downloaded the entire books of the
9	not yet received. So the final adjustment statement was	9	company from our SAP system. So we as company we
10	based for some months on an estimate on costs which	10	have a subsystem in which we were booking all the
11	were supposed to be the final value, in the sense that	11	transactions. The transactions were transparent to
12	in the management of a contract with a third party	12	everybody, in the sense that downloading all the
13	contractor you receive the invoice after the service has	13	transactions, everything was tracked, the right
14	been rendered. Therefore, for the invoices relevant to	14	transaction, the wrong transaction and the reversal of
15	June even to me the final invoice and, of course, the	15	each transaction.
16	payment that usually make after 40/45 six days has	16	THE CHAIRMAN: And that information, when was that provided?
17	not been made. So it was not possible in the short	17	A. It was provided together with the final adjustment
18	period provided by the SPA to provide to Allied all the	18	statement, one day before the final adjustment
19	supporting documents with evidence of the payment	19	statement. There was a CD provided by letter
20		20	THE CHAIRMAN: I see that the date of it is July 23 but
20	already all the payments done.	20 21	-
	But despite this factor, we after the submission	21 22	I also see the receipt is apparently exactly the same
22	of the final adjustment statement we gave the	22 23	time by Allied. Do you have any explanation for that?
23 24	opportunity to Allied to sit together, to reconcile the	23	Was it sent out on July 23 or July 24?
24 25	position, to provide additional information, if they	25	A. I cannot answer. I believe it was the 23rd — usually
43	needed, to provide additional evidence. Unfortunately,	23	our what we were doing this was not the case but
	Page 182		Page 184
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1	usually we were advancing to our partner the letter by	1	INDEX
2	emails, because this was our general practice, advancing	2	PAGE
3	the letter by emails, then providing the original	3	Housekeeping1
4	document by courier.	4	
5	THE CHAIRMAN: Yes. So you provided all of this material on	5	Opening submissions by MR NESBITT5
6	a CD-ROM and they received it on July 26 when they	6	F. 8-11-15
7	received the final adjustment statement	7	Opening submissions by MR SHOESMITH30
8	A. Yes	8	• F • • • • • • • • • • • • • • • • • •
9	THE CHAIRMAN: is that correct?	9	Further opening submissions by48
10	A we have the evidence that they received we have	10	MR NESBITT
11	the stamp on the letter. In the letter the original	11	
12	letter the original letter that we provided to them	12	Opening submissions by MR WADE82
13	is stamped by Allied on July 26.	13	· P · · · · · · · · · · · · · · · · · ·
14	THE CHAIRMAN: So they would not have had a chance to review	14	Opening submissions by MR GUNNING90
15	the CD before they received the final adjustment	15	· P · · · · · · · · · · · · · · · · · ·
16	statement; is that correct?	16	MR GIUSEPPE CERRITO (called)158
17	A. Well, in the CD there was already the breakdown of the	17	
18	costs	18	Examination-in-chief by MR NESBITT158
19	THE CHAIRMAN: Excuse me	19	,
20	A. Yes, I don't believe they were able to	20	Cross-examination by MR WADE159
21	THE CHAIRMAN: They received them virtually at the same	21	•
22	time?	22	Questions from THE TRIBUNAL183
23	A. Yes.	23	•
24	THE CHAIRMAN: That was the only question.	24	
25	A. Yes, I believe, yes.	25	
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	1 age 103		1 age 107
1	THE CHAIRMAN: Okay.		
2	Redirect?		
3	MR NESBITT: No redirect, thank you Mr Chairman.		
4	THE CHAIRMAN: Thank you very much. No further questions,		
5	then. You are released, Mr Cerrito. Thank you very		
6	much for your testimony.		
7	A. Thank you everybody.		
8	THE CHAIRMAN: Shall we now adjourn until tomorrow morning		
9	at 10.00 am?		
10	MR NESBITT: If we must, Mr Chairman.		
11	THE CHAIRMAN: I look forward to seeing you at 10.00 am.		
12	(5.30 pm)		
13	(The arbitration adjourned until 10.00 am		
14	on Thursday, 16 June 2016)		
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